



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL REVISION APPLICATION NO. 174 OF 2016

APPLICANTS

- : 1. Yogesh @ Yograj S/o. Sakharam Kumbhare, Aged about 42 Years, R/o. Heti, Tahsil Sadak-Arjuni, District Gondia (Accused No.8).
2. Ramu S/o. Natthu Wattu, Aged about 46 Years, R/o. Thatezari, Tahsil Sadak-Arjuni, District Gondia (Accused No. 9).
3. Ramkrishna S/o. Zitu Madavi, Aged about 50 Years, R/o. Thatezari, Tahsil Sadak-Arjuni, District Gondia (Accused No. 10).
4. Nandlal S/o. Tansu Sayam, Aged about 47 years, R/o. Thatezari, Tahsil Sadak-Arjuni, District Gondia (Accused No. 11).
5. Tulshiram S/o. Bhiwa Wadave, Aged about 46 years, R/o. Thatezari, Tahsil Sadak-Arjuni, District Gondia (Accused No. 13).

//VERSUS//

NON-APPLICANT

: State of Maharashtra, through Range Forest Officer, Sakoli, District Bhandara.

Mr. V.M. Vishwarupe, Advocate h/f. Mr. R.R. Vyas, Advocate for the Applicants.

Mr. A.R. Chutke, APP for the Respondent/State.

CORAM : G. A. SANAP, J.

RESERVED ON : 17th AUGUST, 2023.

PRONOUNCED ON : 5th OCTOBER, 2023.

JUDGMENT

In this revision application, challenge is to the judgment and order dated 15th September, 2016, passed by the learned Sessions Judge, Bhandara, whereby the learned Sessions Judge dismissed the appeal (except the modification of sentence) filed by the applicants/accused Nos.8, 9, 10, 11 and 13 against their conviction and sentence awarded by the learned Judicial Magistrate First Class, Sakoli for the offences punishable under Sections 9, 27, 29 and 31 read with Section 51(1) of the Wild Life (Protection) Act, 1972 (for short "the Act of 1972"). The learned Magistrate, on conviction, had sentenced the accused to suffer rigorous imprisonment for one year and to pay fine of Rs.300/- each and in default to suffer simple imprisonment for a period of one month.

02] BACKGROUND FACTS :-

On the report of PW-2 Anand Meshram (Forest Guard), a Crime bearing No.158/2005 was registered on 16th August, 2005. It is the case of prosecution that on 16th August, 2005, PW-2 Anand Meshram (Forest Guard) had received a secret information

that two Chitals (axis axis) were hunted in Nagzira Forest and the meat was sold at Village Heti. They visited the house of the accused No.1 by name Najuk Gahane. They took the house search and in the house search, they found that the meat was being cooked in a big pot. Accused No.1 admitted the purchase of the Chital meat from the other accused. The meat was seized under the panchanama. The information provided by accused No.1 led to arrest of the remaining accused. During the course of the investigation, the accused were arrested. The accused made confessional statements during the investigation. The accused led the Forest Officers to the spot where the Chitals were killed. From the spot, some parts of the Chitals and weapons were seized. The material used for laying the trap to catch the Chitals was also seized at the instance of the accused. The articles were seized by drawing panchanama. After completion of the investigation, the case was filed in the Court of Judicial Magistrate First Class, Sakoli.

03] The prosecution examined ten witnesses to bring home the guilt against the accused. The learned Judicial Magistrate First Class, on consideration of the evidence, found the applicants/accused, guilty of the offences and sentenced them as above. The learned Magistrate acquitted the remaining accused.

The appeal filed by the applicants/accused against their conviction and sentence was dismissed by the learned Sessions Judge, Bhandara. However, the learned Sessions Judge modified the substantive sentence and reduced it to six months from one year.

04] I have heard Mr. V.M. Vishwarupe, learned advocate holding for Mr. R.R. Vyas, learned advocate for the accused and Mr. A.R. Chutke, learned Additional Public Prosecutor for the State. Perused the record and proceedings.

05] Learned advocate for the accused submitted that the evidence adduced by the prosecution is not sufficient to prove the charge against the accused. Learned advocate took me through the evidence and pointed out the lacunas in the evidence of the prosecution witnesses. Learned advocate pointed out that the seized meat and other body parts of the Chitals were not sent to forensic laboratory for examination and analysis. Learned advocate submitted that, therefore, there is no evidence to prove that the meat and other body parts seized during the course of investigation were of Chitals. Learned advocate submitted that, therefore, the basic fact of killing the Chitals has not been proved. Learned advocate further submitted that the prosecution has heavily relied

upon the confessional statements of the accused, recorded by the Forest Officers during the course of investigation. Learned advocate submitted that the evidence on record clearly indicates that the confessions were not recorded by the Competent Officer in terms of Section 50(8) of the Act of 1972. Learned advocate further submitted that the evidence on record is not sufficient to prove that the confessional statements were made voluntarily. Learned advocate pointed out that the approach of the officials in the process of recording the confessional statements was too casual and mechanical. The evidence on record indicates that the confessions were not recorded personally by the Competent Officer (PW-8). Learned advocate took me through the evidence of PW-6, who is the Forest Guard, and the evidence of PW-7, who is the Range Forest Officer, and on the basis of their evidence, submitted that the confessional statements were recorded by them and not by PW-8. Learned advocate submitted that the prosecution has miserably failed to prove that the confessional statements made by the accused were voluntary and therefore, the confessional statements cannot be made the basis of conviction.

06] Learned advocate took me through the evidence of the witnesses and pointed out that on material points, there are major

inconsistencies in their evidence. Learned advocate further submitted that all the witnesses are the Forest Officers and as such interested in the case of prosecution. Learned advocate submitted that serious doubt has been created about the case of prosecution on minute perusal of the evidence of these witnesses. Learned advocate further pointed out that the independent panch witnesses were not examined. The prosecution has not placed on record plausible explanation for non-examination of the independent panch witnesses. Learned advocate submitted that the Courts below have not taken all these facts into consideration and as such came to a wrong conclusion.

07] Learned Additional Public Prosecutor submitted that the Courts below have properly appreciated the evidence of the prosecution witnesses. Learned Additional Public Prosecutor took me through the confessional statements and submitted that the confessional statements were recorded by the Competent Officer. Learned Additional Public Prosecutor submitted that on the basis of the evidence of the Competent Officer, the Prosecution has proved that the confessional statements are voluntary and truthful. Learned Additional Public Prosecutor submitted that the evidence of the witnesses cannot be discarded only on the ground that all the

witnesses are from the Forest Department. Learned Additional Public Prosecutor submitted that there are no major inconsistencies in the evidence of the witnesses and therefore, the evidence of these witnesses has been found credible by the Courts below. Learned Additional Public Prosecutor submitted that the concurrent findings of fact recorded by the Courts below are on the basis of proper appreciation of the evidence and therefore, the same need not warrant interference.

08] In order to appreciate the rival submissions, I have gone through the record and proceedings. It has come on record that after arrest of the accused, place of incident was inspected by the Forest Officers. It is the case of the prosecution that the accused led the Forest Officers to the spot where the Chitals were allegedly killed. It has come on record that the cooked meat was seized. Similarly, two hoofs and skin were seized from the spot. It has come on record that the meat, seized by the Forest Officer, was cooked. In this case, neither the cooked meat nor other body parts of the Chitals were sent to the forensic laboratory for examination and analysis. The Forest Officers have deposed before the Court that since they are acquainted with the factual position and in the know-how of the animals, they identified that the meat and other

parts being of Chitals. It is seen on perusal of the record that the carcasses or skeletons of the killed animals were not found from the spot. Some body parts like hoofs and skin were found. The Investigating Officer was required to take proper care, considering the seriousness of the crime. He was expected to send the meat and other body parts to the laboratory for examination and analysis. The report of the examination and analysis of the body parts would have been the concrete evidence in support of the case of the prosecution. No explanation has been placed on record for not undertaken this exercise by PW-7 and PW-8.

09] The question is whether the evidence of the Forest Officers with regard to the identification of the body parts being of Chitals, could be said to be conclusive proof of the fact that the cooked meat and the body parts were of Chitals. In my view, considering the fact that the provisions of the Act of 1972 are very stringent, the provisions required strict interpretation. In such a situation, the compliance of mandatory provisions has to be made scrupulously. It is said that more stringent the punishment, the grater should be the care, while conducting the investigation. In this case, in my view, on the basis of this evidence, it is not possible to record a finding that the cooked meat and the parts seized

during the investigation were the body parts of Chitals. It is not the case of the prosecution that the examination of the articles could not be carried out for one reason or the other. It is not out of place to mention that there is independent laboratory for examination and analysis of the body parts of the animals. In this case, killing of Chitals is the genesis of the crime. Failure to establish the very genesis of the crime is fatal to the case of prosecution. In my view, therefore, on this count, the benefit of doubt is required to be given to the accused.

10] It is true that some material was seized from the spot. The spot was in the forest area. The trap material and axe were found. The main question in this context is as to whether the recovered material from the forest could be attributed and connected to the accused. The prosecution has not examined the independent panch witness. No plausible explanation has been placed on record for non-examination of the independent panch witness. Even if it is assumed for the sake of argument that this material could be attributed to the accused, this may not be sufficient to conclude that the Chitals were killed and the body parts found on the spot were of Chitals. Therefore, on this count also, the evidence is found lacking.

11] The next important aspect is with regard to the admissibility and proof of the confessional statements of the applicants/accused, relied upon by the prosecution. A confessional statement made before the Competent Officer, as provided under Section 50(8), is admissible in evidence in view of the provisions of sub-section 9 of Section 50 of the Act of 1972. The provisions of sub-sections (8) and (9) of Section 50 are analogous to the provisions of Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the NDPS Act”), Section 108 of the Customs Act, 1962 and Section 72 of the Indian Forest Act, 1927. The provisions of Section 50 of the Act of 1972 is a part of special Statute. It has overriding effect and prevails over the general provisions of the Indian Evidence Act, particularly Sections 25 and 26. Sub-sections (8) and (9) of Section 50 are exception to the general rule that the confession made before the Police Officer during the custody is not admissible in evidence against the accused.

12] It needs to be stated, at this stage, that the fundamental protection provided under law against self-incrimination has to some extent been diluted by this special provision. This provision is an exception to the general rule. In view of this exceptional

provision, corresponding duty has been cast upon the Competent Officer to follow the procedure and ensure that the safeguards provided to the accused under law are sufficiently met. Section 164 of the Code of Criminal Procedure, 1973 (for short “Cr.PC”) provides the procedure for recording the confessional statements of the accused by the Magistrate. Similarly, the special criminal enactments provide for the admissibility of the confessional statements of the accused. The special enactments contain the procedure and inbuilt mechanism, while recording the confessional statement. The procedural mechanism has to be proved as a fact. It is necessary, in such cases, to prove that the confessional statement made by the accused was voluntary and truthful.

13] The question is whether the safeguards provided to the accused under the law can be taken away by undertaking such an exercise mechanically. It is trite law that the confession made by the accused during the custody under Section 50(8) must be voluntary and truthful. In such cases, the question of fact that needs to be addressed by the Court is whether the confessional statement is voluntary or not. A confessional statement is said to be voluntary, if it is not caused by threat, inducement, torture or pressure etc. If a confession is caused by threat, inducement, torture or pressure etc.,

then it could not be said to be a voluntary confession and as such has to be discarded in entirety. The Officer empowered to record the confession, therefore, has to be independent officer having no concern with the investigation. Before recording the confessional statement, such Officer is required to make an enquiry with the accused about any pressure, threat or inducement by the Investigating Officer. The Officer must try to know from the accused as to why he intends to make confession and cleanbreast of the crime. The Officer is required to give an understanding to the accused that he is not bound to make a confession and despite such a warning, if he makes a confession, then it could be used as an evidence against him in the trial. The Officer is supposed to enquire with the accused about the time required for reflection. The Competent Officer before recording the confessional statement must be satisfied that on account of repentance and remorse, the accused has made up his mind to cleanbreast of the crime committed by him. The Competent Officer is required to maintain a contemporaneous record of all the precautions and the procedure followed by him. Whenever the confessional statement is questioned on the ground that it was the result of threat, inducement, promise or torture, the contemporaneous record must be sufficient to rule out the said possibility.

14] The question whether the confessional statement is voluntary or not has to be decided keeping in mind the facts and circumstances of each and every case. The evidence on record needs proper scrutiny and appreciation. It is common knowledge that the Forest Officers, like Police Officers are not required everyday to conduct the investigation. The wildlife crime investigation methodology is in the process of evolution. The lapses and lacunas in the investigation result into the acquittal of the accused in a serious crime. It is not out of place to mention that after realising this phenomena, the Wildlife Crime Control Bureau Ministry of Environment and Forest Government of India has prepared and published a handbook for Wildlife Crime Investigation Officers. The first edition was published in 2013. Chapter 6 of the guidelines is with regard to the investigation and complaint. Clause 6.25 specifically deals with interrogation of the accused/suspect. In my view, it would be appropriate for the purpose of proper understanding and to throw light on all these aspects, it would be appropriate to reproduce the guidelines Clauses 6.25 to 6.33 of Chapter 6 interrogation of the accused/suspect. Clauses 6.25 to 6.33 of Chapter 6 are extracted below:

“6.25. Skillful interrogation of the accused/suspect is essential for any successful criminal investigation. In order to get further leads, preliminary interrogation of the accused should be conducted at the seizure site. He should be interrogated further, in detail subsequently, and his statement should be recorded by an authorised officer. Such statement of an accused recorded by a forest officer will be extra-judicial confession of the accused.

6.26. As provided in Section 50(9) of Wild Life (Protection) Act, 1972, the evidence recorded by the authorised officer under Section 50(8) (d), in the presence of the accused, is admissible as evidence.

6.27. Accused should be interrogated for backward linkages like source of procurement of the wildlife materials, monetary transactions, details of middlemen involved in the trade, modus operandi in poaching & transportation, other members of the gang, place or places where the wildlife materials are concealed and for forward links like prospective buyers, involvement of middlemen or brokers, existence of organised gangs in the trade etc. All the replies elicited by the accused should be clearly documented.

6.28. The evidentiary value of a confession statement depends on its voluntary character. A confession made under any inducement, threat or promise loses its credibility. Thus a confession should be voluntary, true and trustworthy. It must be clear and unequivocal and admitting the commission of the crime. As per Section 30 of Indian Evidence Act, the statement of an accused can be taken into consideration against another accused involved in the same crime.

6.28. Confession statement should be recorded within 6-12 hours of the arrest of the accused. Undue delay in recording the confessional statement has an adverse effect on its credibility. The accused may also make up his mind not give such statement.

6.29. It is also advisable not to record the confession statement immediately after the arrest of the accused. The authorised officer recording the confession should give some time to the accused for making up his mind to confess. It is also the bounden duty of the authorised officer to explain the accused that he is not bound to make a confession. This fact should be recorded in the statement.

6.30. As far as possible the confession should be recorded in same language and exact words told by the accused. Once it is recorded, the statement should be read over to the accused in the language in which it was made and explained.

6.31. Every page of the confession should be signed by the accused and the officer recording the statement. If the accused refuses to sign the statement, the same should be mentioned in the statement.

6.32. Where the confession discloses chance of recovery of article/ weapons, any other incriminating evidence, involvement of other accused etc., the Investigating Officer should seek custody of the accused and go for recoveries. It has been held by various courts that forest officers are competent to get remand of the accused for the purpose of investigation. Confession made before any forest officer falls in the category of extra-judicial confession and the same is admissible in evidence provided the same is made voluntarily and there is other evidence to corroborate the facts disclosed in the confession.

6.33. Accused/suspect should not be subjected to physical duress or other coercive methods to elicit confession.”

15] The sum and substance of the above guidelines indicate that a great care is required to be taken at the time of recording the confessional statement. The confessional statement recorded by the

Forest Officer falls in the category of extra-judicial confession and the same is admissible in evidence, provided the same is made voluntarily and there is other evidence to corroborate the facts disclosed in the confession. It is, therefore, apparent that the Ministry of Environment and Forest Government of India also realised that there were shortcomings and in order to overcome the said shortcomings, the guidelines in the form of handbook was felt necessary. The Forest Officers are required to make use of this handbook.

16] The Hon'ble Supreme Court in the case of *Shivappa Vs. State of Karnataka [(1995) 2 SCC 76]*, while appreciating the confessional statement recorded by the learned Magistrate under Section 164 of the Cr.PC, has held that all the procedural precautions must be taken at the time of recording the confession. For the purpose of proper appreciation, it would be necessary to reproduce paragraphs 6 and 7 of the judgment. It is extracted below:

“6. From the plain language of Section 164 CrPC and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under 164 CrPC, it is manifest that the said provisions emphasise an inquiry by the Magistrate to ascertain the voluntary nature of the confession. This inquiry appears to be the most

significant and an important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 CrPC. The failure of the Magistrate to put such questions from which he could ascertain the voluntary nature of the confession detracts so materially from the evidentiary value of the confession of an accused that it would not be safe to act upon the same. Full and adequate compliance not merely in form but in essence with the provisions of Section 164 CrPC and the rules framed by the High Court is imperative and its non-compliance goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administering the caution, warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines

to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody.

7. *The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody or jail custody must appreciate his function in that behalf as one of a judicial officer and he must apply his judicial mind to ascertain and satisfy his conscience that the statement the accused makes is not on account of any extraneous influence on him. That indeed is the essence of a 'voluntary' statement within the meaning of the provisions of Section 164 CrPC and the rules framed by the High Court for the guidance of the subordinate courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on the record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the court that sits in judgment in the case, that the confessional statement was made by the accused voluntarily and the statutory provisions were strictly complied with."*

17] The Hon'ble Supreme Court in another decision in the case of ***Raju Premji Vs. Customs, NER, Shillong Unit [(2009) 16 SCC 496]***, while considering the case of the accused under the NDPS Act, has held that the confessional statement is admissible, provided the prosecution proves that it is voluntary and truthful. It is to be noted, at this stage, that the question of truthfulness of confessional statement needs to be gone into only when the confession is proved to be voluntary.

18] In view of the above settled legal position, the evidence on record needs appreciation. In this case, the prosecution has placed heavy reliance on the evidence of PW-7 and PW-8. PW-7 at the relevant time was the Range Forest Officer. PW-8 was working as Assistant Conservator of Forest. As per Section 50(8) of the Act of 1972, any Officer not below the rank of Assistant Director of Wild Life Preservation or an Officer not below the rank of Assistant Conservator of Forest is authorized to record the confessional statement. In view of this provision, PW-8 was Competent Officer to record the confessional statement. PW-7 was not empowered to record confessional statement. At this stage, it is necessary to state that the main investigation was conducted by PW-7. There is evidence on record to indicate that some part of investigation was conducted by PW-8. With this undisputed position, their evidence is required to be scrutinized. The main issue required to be addressed on the basis of the evidence of PW-8 is as to whether the required procedure was followed by him under the law at the time of recording the confessional statements. It is also necessary to see whether the evidence and material on record is sufficient to prove that the confessional statements made by the accused were voluntary and without any threat, torture, inducement, pressure etc.

19] Before proceeding to consider the evidence of PW-8, the appreciation of evidence of PW-6, who at the relevant time was the Forest Guard, is necessary. In his evidence, PW-6 has stated that in presence of the Superior Officers, he recorded the statements of the accused persons. The statements recorded by PW-6 were signed by PW-6. In his evidence, he has not stated that he recorded the confessional statements of the accused in presence of PW-8. It was suggested to him in cross-examination that he recorded the confessional statements as stated by his superiors. He denied this fact. In my view, this admission in cross-examination is very vital and important. This admission indicates that he recorded the statements of the accused. He has not stated that he only scribed the statement as narrated by his superior officer. It is the defence of the accused that their statements were already prepared and their signatures were obtained on the statements by applying force.

20] The next important witness is PW-7. In his evidence, he has admitted that PW-8 was part of the investigation in this case. He has stated that in his presence, the statement of Najuk Gahane was recorded. He has further stated that the Forest Guard Mr. Khobragade recorded the statements of 18 accused in his presence. He has further admitted that Mr. Khobragade obtained the

signatures of the accused in his presence as well as in presence of the panch witness on their statements. He has identified those 21 confessional statements. In his further evidence, he has stated that when the accused No.11 (applicant No.4) showed the place of occurrence, PW-8 was present. He has further stated that the confessional statements of the accused were recorded in his presence as well as in presence of PW-8 by Forest Guard Mr. Badve. In his cross-examination, he has admitted that when the statements were recorded, the accused were in forest custody. He has further admitted that, by that time, the independent panch witness was not summoned. It was suggested to him that the accused persons were pressurized and tortured and therefore, they were forced to sign on the statements already prepared. Overall perusal of his evidence indicates that he played an important role in recording the statements. He was the Investigating Officer. The accused were in his custody. He, at the relevant time, was not competent to record the statements. The record indicates that after 4 days from grant of forest custody, the statements of the accused were recorded. The evidence of PW-7 is conspicuously silent about the precautions taken by him at the time of recording the confessional statements of the accused. He has admitted that the statements were recorded in his presence by the Forest Guard. This

fact would indicate that he was actively involved in recording of the statements of the accused. The statements of the accused produced on record were signed by him. He was not required to sign the said statements. In my view, the evidence of PW-7 indicates that he was instrumental in recording the confessional statements.

21] It would be necessary to consider the evidence of PW-8, who at the relevant time, was the Competent Officer for the purpose of recording the statement. In his evidence, he has admitted that he was the part of the investigation. He has stated that the seizure of the articles was made in his presence. He has stated that the confessional statement of accused Najuk Gahane was recorded in his presence. He has stated that the statement bears his signature and signature of Range Forest Officer Mr. Meshram (PW-7). He has further stated that he recorded the statements of the remaining accused as well. He has stated that the statements were recorded in his presence. He has categorically stated in his examination-in-chief that since the statements were recorded in his presence, he made the signatures on the same. His examination-in-chief is silent about the procedure followed by him at the time of recording the confessional statements. He has admitted that the

statements were recorded in presence of PW-7 Mr. Meshram. In his evidence, he has not stated the name of the person, who actually wrote the statements. In his evidence, he has not stated that the statements were made by the accused voluntarily in his presence and as per his dictation, the statements were scribed by any other officer. He has not stated that before recording the statements, he had made any kind of enquiry with the accused to form an opinion that the accused were making the statements voluntarily. He has not stated that he had assured the accused that they would not be sent to forest custody after recording their statements. He also did not ask the accused the reason for making the confessional statements. He did not ask the accused about the reflection time required by them to reconsider the desire expressed by them to make the confession.

22] Perusal of the confessional statements would show that the time of recording the confessional statements was not mentioned. It is seen on perusal of the record that on the same date, almost all the confessional statements were recorded. There are 21 confessional statements. In view of this factual position, PW-8 was required to mention the date and time of commencement of recording the confessional statements and completion of recording

the confessional statements. The accused have taken a defence that their statements were already prepared and they were forced to make the signatures on those statements. PW-8 was not only required to follow the procedure, but he was also required to maintain a record of the same. The record can be used as a contemporaneous material to decide the issue as to whether the confessional statements were made voluntarily or not.

23] In this context, perusal of his cross-examination would be relevant. He has admitted that before recording the confessional statements, he did not prepare any document. He has stated that all the confessional statements were recorded by one person. He was unable to tell the name of the said person. He has also stated that he does not know the designation of the said person. It was suggested to him that when he recorded the confessional statements, the accused were in his custody. He has denied this suggestion. In my view, this answer is contrary to the record. He has stated that the accused were arrested on 16th August, 2005. He has stated that when the accused were arrested, he was present. He has stated that some of the accused were arrested from the spot and some of the accused were arrested from their houses.

24] Perusal of the evidence of PW-8 is sufficient to conclude that he did not play an important role in the process of recording the confessional statements of the accused. He played an important part in the investigation of the crime. Sub-sections (8) and (9) of Section 50 are exception to the general rule. The provision has its object. It needs to be stated that every action/step taken by the Competent Officer must be in the direction to fulfill the very object of the provision. A confessional statement made under pressure, threat, inducement or as a result of torture could not be said to be voluntary confession. The evidence on record must be sufficient to prove beyond doubt that the accused due to sheer, remorse and repentance desired to cleanbreast of the crime and made the confession.

25] It needs to be stated that all these facts must be established. The Wild Life Protection Act has its object. At the same time, one cannot be oblivious of the right of the accused in a criminal trial. The fundamental principle of criminal jurisprudence, while appreciating such a provision, needs to be borne-in-mind. The accused has right to remain silent. He deserves fair trial. The prosecution is required to prove the guilt of the accused beyond reasonable doubt. It needs to be stated that when

the provisions like sub-sections (8) and (9) of Section 50 are applied in a given case, the Court must ensure its compliance in letter and spirit. In this case, the evidence of PW-8, who at the relevant time was the Competent Officer, woefully falls short to satisfy the basic mandatory requirements of law. The statements of the accused relied upon by the prosecution at their face value indicate that the same cannot be given a value greater than the value attached to the statement recorded under Section 161 of the Cr.PC. In this case, majority of the statements were recorded by PW-7. He was not the Competent Officer to record the statements. The evidence of PW-8 indicates that he was not deeply involved in the process of recording the statements of the accused. The record indicates that the major part in this process was played by PW-6 and PW-7. On the basis of the material on record, I am satisfied that the prosecution has miserably failed to prove that the confessional statements are voluntary. Once it is held that the confessional statements are not voluntary, its truthfulness diminishes automatically. In my view, therefore, the prosecution cannot rely on this part of the evidence.

26] There is one more flaw in the judgment and order passed by the learned Magistrate. The confessional statements of the

accused have been made the basis of the conviction of the accused. The evidence in the form of confessional statements was the vital incriminating material against the accused. As per Section 313 of the Cr.PC for the purpose of enabling the accused personally to explain any circumstances appearing in evidence against him, it must be put to the accused in his examination under Section 313 of the Cr.PC.

27] The Hon'ble Supreme Court in the case of ***Sharad Birdhichand Sarda Vs. State of Maharashtra [AIR 1984 SC 1622]*** has held that the provisions of Section 313 are mandatory. The compliance of this provision must be made in letter and spirit. It is held that the circumstances, which are not put to the accused in his examination under Section 313 of the Cr.PC, have to be completely excluded from consideration. Such circumstances cannot be used against the accused to base his conviction.

28] In this case, I have minutely perused 313 Cr.PC statements of the accused recorded by the Court. At the time of recording the statement under Section 313 of the Cr.PC, the contents of their confessional statements or the substance of their confessional statements were not put to them, so as to enable them

to explain the same. The learned Magistrate was required to frame the questions on the basis of the confessional statements. The learned Magistrate has not framed even a single question to indicate that the substance of the confessional statements was put to the accused. The learned Magistrate could have done so. Perusal of 313 Cr.PC statements of the accused would show that the common questions were framed for all the accused. In such cases, where there are more than one confessional statements and particularly inculpatory confessional statements, the Court is required not only to put the substance of the confessional statement of the individual accused to the said accused, but also is under an obligation to put the substance of the confessional statements of the co-accused to each and every accused. In this case, the conviction has been based on the confessional statements of the accused and co-accused. Not a single question was put to any of the accused, so as to offer them an opportunity to explain the contents of the confessional statements. In my view, this is material flaw in this case. The learned Magistrate has not taken proper care, while recording 313 Cr.PC statements of the accused. The flaw, as stated above, goes to the root of the case of the prosecution. In view of this position, I am of the opinion that the confessional statements cannot be made use of as an evidence for

the purpose of recording the conviction and sentence of the accused.

29] The next important point that needs to be addressed is whether the oral evidence of the witnesses examined by the prosecution is sufficient to prove the guilt of the accused. The witnesses are the Forest Officers. The prosecution has not examined any independent witness. There were independent panch witnesses. No plausible explanation has been put-forth for non-examination of the independent witnesses. The Forest Officers were interested witnesses. However, in my view, this could not be the sole ground to reject the evidence of Forest Officers being interested witnesses. It is, however, a settled position in law that before placing implicit reliance on such evidence, it must be proved that there are no inconsistencies in the evidence of the witnesses on material aspects.

30] I have minutely gone through the evidence of the witnesses. It is to be noted that except 5 accused, remaining 16 accused were acquitted by the learned Magistrate. The articles seized from the spot were not produced before the Court. It is further seen that the evidence of PW-7 and PW-8, on material

points, is inconsistent. The evidence of the prosecution witnesses, therefore, does not inspire confidence. The inconsistencies in their evidence are such to create doubt about the investigation as well as the involvement of the accused in the commission of crime. In my view, therefore, it would not be safe to rely on the evidence of the Forest Officers. The evidence, on bare perusal, appears to be tainted evidence. Such a tainted evidence cannot be made the sole basis of conviction.

31] Perusal of the judgment and order passed by the learned Sessions Judge would show that the learned Sessions Judge has not addressed all the above issues, though the same were raised at the time of the argument. The learned Sessions Judge appears to have ignored all these important aspects. In my view, therefore, the conviction and sentence cannot be maintained. The evidence is not sufficient to maintain the conviction and sentence. The submissions made by the learned advocate for the accused, therefore, deserves acceptance.

32] Before parting with the matter, considering the serious lapses committed by the Competent Forest Officers, while recording the confessional statements, it is necessary to direct all the concerned to take remedial steps. The Wildlife Crime Control

Bureau Ministry of Environment and Forest Government of India has prepared and published a handbook for Wildlife Crime Investigation Officers. The reference of the same has been made in the earlier part of the judgment. It is observed that despite publication of the handbook, there appear to be no improvement at the ground level. It appears that the Investigating Forest Officers and the Officers competent to record the confessional statements are either not made aware of this handbook or the Officers have not bothered to follow the guidelines from the said handbook. The investigation of crime requires training as well as the efforts to harness the investigation skills. In my opinion, the best possible way to harness the investigation skills of the Forest Officers, the Forest Officers can arrange departmental workshops. In order to take care of this important aspect and to harness the investigation skills and to understand the intricacies of the law in this regard, the possibility of conducting the workshops at Judicial Academies in the State of Maharashtra like Judicial Officers' Training Institute at Nagpur or Maharashtra Judicial Academy at Uttan can be explored. Such workshops organised in coordination with the officials of J.O.T.I. and M.J.A, in my view, can help the Forest Officers in understanding the intricacies of the subject and to implement the same at the time of investigation at ground level. In

my view, this is the need of the hour. If timely steps are not taken in this direction, then the flaws left in the proceeding, while conducting the investigation, can lead to the acquittal of the accused. The acquittal of the accused, in such a serious crime due to mistakes and flaws in the investigation, is a serious matter. The crimes of killing of wild animals are on rise. The crimes of killing of wild animals directly result in affecting the ecological balance. The crimes of killing of wild animals are generally committed for economic/financial gains. In some cases, the crime syndicate is involved in such offences. In view of this, training is necessary for the Forest Officers, who are required to conduct the investigation at ground level and particularly for the Competent Officers who are authorised under law to record the confessional statement.

33] Learned Registrar (Judicial) shall forward the copy of this judgment to Principal Chief Conservator of Forest, Head of Forest Force (HOFF), Nagpur and Principal Chief Conservator of Forest (Wild Life), Nagpur. The Principal Chief Conservator of Forest, Head of Forest Force (HOFF), Nagpur and the Principal Chief Conservator of Forest (Wild Life), Nagpur, on receipt of the copy of the judgment, shall take all necessary steps in view of the above observations.

34] Accordingly, the Criminal Revision Application is **allowed.**

(i) The judgment and order dated 15th September, 2016, passed by the learned Sessions Judge, Bhandara in Criminal Appeal No.01/2016 as well as the judgment and order dated 29th December, 2015, passed by the learned Judicial Magistrate First Class, Sakoli in Regular Criminal Case No.46/2006, are quashed and set aside.

(ii) Applicants/accused Nos.8, 9, 10, 11 and 13 are acquitted of the offences punishable under Sections 9, 27, 29 and 31 read with Section 51(1) of the Act of 1972.

(iii) Their bail bonds stand cancelled.

(iv) Fine amount, if any, deposited by the accused be refunded to them.

35] The application is disposed of.

(G. A. SANAP, J.)