

IN THE COURT OF SUB-DIVISIONAL JUDICIAL MAGISTRATE (M), MARGHERITA:

TINSUKIA

C.R. CASE NO: 6 OF 2011

U/Sec 24/25 & 40/41 of Assam Forest Regulation

STATE OF ASSAM

..... PROSECUTOR

-Vs.-

1) SRI MINTU BURAGOHAIN

S/O: SRI JUNESWAR BURAGOHAIN

ADDRESS: 2 NO. PANBARI GAON

P.S. DIGBOI, DIST: TINSUKIA, ASSAM

2) SRI LATU GOGOI

S/O: LATE BADAN GOGOI

ADDRESS: 2 NO. PANBARI GAON

P.S. DIGBOI, DIST: TINSUKIA, ASSAM

3) DILIP BURAGOHAIN

S/O: LATE TUKHESWAR BURAGOHAIN

ADDRESS: 2 NO. PANBARI GAON

P.S. DIGBOI, DIST: TINSUKIA, ASSAM (Case is abated vide order dated 20/10/14)

.....ACCUSED

PRESENT: SALEH AHAMMAD, LL.M. AJS

SUB-DIVISIONAL JUDICIAL MAGISTRATE (M), MARGHERITA,

TINSUKIA

FOR THE STATE: Mr. BAPPA PURKAYASTHA, LEARNED ASST.PP

FOR THE ACCUSED: Mrs. MINU SONOWAL, LEARNED DEFENCE COUNSEL

CHARGE FRAMED ON: 21/11/17

EVIDENCE RECORDED ON: 27/12/12, 19/04/14, 23/03/18 & 07/02/19

ARGUMENT HEARD ON: 22/04/19

JUDGMENT DELIVERED ON: 03/05/2019

JUDGMENT:

1. The genesis of this case had its roots with the wherein the complainant had lodged a complaint before the SDJM(M), MARGHERITA stating inter alia that on 27-01-2011 at about 11-30 A.M. the staff of Digboi range had performed a patrolling duty at Nazirating Forest Beat area under upper Dihing reserve forest. During their duty the accused persons were involved in timber smuggling. They caught them red handed while they were sowing hilikha tree by showing implements in sawpit. The accused persons had committed an offence u/s 24, 25, 40 & 41 of Assam Forest Regulation Act, 1891 and amendment Act 1995 as well as violation of Hon'ble Supreme Court Judgment (Civil) 202 and Sec. 29 of Obstruction of Wild Life Habitat. The accused person was forwarded to this court and the complainant has stated that as the accused persons have violated the sections 24, 25, 40/41 of the Assam Forest Regulation (AFR) 1891, and the I/O had submitted the complaint against the accused persons. The accused persons were remanded to judicial custody and thereafter my learned predecessor had allowed them to go on bail.
2. In due course, cognizance was taken against the accused persons and the accused persons appeared before the court to face the trial. The copies of the relevant documents were furnished to the accused persons as per provision of section 207 of CrPC. Taking into consideration the evidence adduced by the PW1 & PW2 as adduced by them before framing of charge, my learned predecessor was pleased to frame charge against the accused persons U/S 24/25/41 of the AFR which on being read over and explained, to the accused persons to which they pleaded not guilty and claimed to be tried.
3. In this case the prosecution has adduced as many as two PW's to prove the case and they were further cross examined after framing of charge and discharged. One of the witness Sri Pabitra Singh could not be examined in this case as he had expired. During the course of trial one of the accused person Dilip Buragohain has left for the next world. In this case the statements of the accused persons are hereby recorded and the pleas of the accused persons are of total denial. The defence does not want to adduce any DW's from their side.
4. I have heard arguments of the learned defence counsel and the learned Addl. P.P. I have perused the evidence on record and scrutinized the evidence on record.
5. After hearing both sides the following are determined point of determination.

POINT OF DETERMINATION

POINT OF DETERMINATION NO 1:

Whether the accused persons on 27-01-2011 at about 11-30 a.m. were found trespassing inside the Nazirating Forest Beat area under Upper Dihing Reserve Forest under Digboi Forest Division & thereby committed an offence u/s 24 of Assam Forest Regulation Act, 1891?

POINT OF DETERMINATION NO 2:

Whether the accused persons at the same time and place both were found sawing a hilikha tree & thereby committed an offence u/s 25 of Assam Forest Regulation Act, 1891?

POINT OF DETERMINATION NO 3:

Whether the accused persons at the same time and place had breached the rule framed by the government in respect of reserve forest & thereby committed an offence u/s 41 of Assam Forest Regulation Act, 1891?

Discussion, Decision and Reasons there on:

For the sake of convenience all the points are clubbed together:

6. PW1 in his evidence has deposed that he knows the accused persons who are absent today. In 2011 they were on patrolling duty at Nazirating area and they found six persons were cutting trees and three of them fled away when they saw them. They apprehended three accused persons and found logs. They seized one saw from them. Ext.1 is the seizure list and Ext.1 (1) is his signature. The accused persons were brought to the Range Office and thereafter they were forwarded to the Court.
7. During his cross examination he stated they used to go for patrolling regularly and Pabitra Singh also went with them. But Pabitra Singh had expired. He does not remember the names of the other persons. They found the log of Hilakha tree. The seizure list was prepared at the office. The suggestions put forward are of total denial. The incident took place on 27-01-2011. It is mentioned in the seizure list that "Hilikha" were seized but it is not mentioned that wooden logs were seized.
8. PW-2 in his evidence has deposed that there was an occurrence which took place in 2011. He can recognize the accused persons. The incident took place at 11:00 a.m. He does not remember about the occurrence. Ext.1 is the seizure list and Ext.1(2) is his signature.

9. During his cross examination he stated that he signed Ext.1 at the office. All the old wood which are seized by them are kept in their office as well as the earlier woods and articles which are seized by them. The suggestions are put forward are total denial.

I have heard the arguments of the learned ASST.PP & the learned defence counsel.

10. On perusal of the case record it appears that PW1 is the only witness who had seen the occurrence. Even if PW1 had deposed that they had apprehended the accused persons from the Nazirating area and found logs of HILIKHA tree as well as one saw was recovered and seized from them. But in this case during the cross examination of PW1 had remained static and despite cross examination of PW1 there is no such momentum which the learned defence side has been able to achieve in this case. But PW2 didn't know about the occurrence and it has been stated by PW2 he signed EXT 2 in the office. PW3 i.e. PABITRA SINGHA who was the detecting officer of this case couldn't be examined in this case as he left for the heavenly abode.

11. The evidence of PW1 doesn't have any corroboration with the evidence of PW2 in this case. It also appears that PW1 didn't state before the court nor it was made clear by the prosecution side that Nazirating area is a reserved forest or not. The prosecution side must have brought to light that the accused persons have entered into the area which is a reserved forest area but the said aspect couldn't be brought to light in this case. It is true that the accused persons might have entered into the forest area which is a restricted area and no one is allowed to enter inside the said area but the said couldn't be proved beyond doubt and there is lack of corroboration with the evidence of PW1 with that of PW2.

12. This court has also taken into consideration the statement of the accused person's u/sec 313 of CrPC wherein their pleas are of total denial.

13. Hence, it appears that there is doubt in the story of the prosecution and the prosecution has failed to prove the case against the accused persons beyond reasonable doubt.

14. *The golden rule that runs through the web of civilized criminal jurisprudence is that an accused is presumed to be innocent unless he is found guilty of the charged offence. Presumption of innocence is a human right as envisaged under Art.14 (2) of the International Covenant on Civil and Political Rights 1966. Art.11(1) of the Universal Declaration of Human Rights 1948 also provides that any charged with penal offences has a right to be presumed innocent until proved guilty according to*

law in a public trial at which he has had all the guarantees necessary for his defence.

15. In the case of **V. D. Jhingan Vs. State of Uttar Pradesh AIR 1966 SC 1762¹** the hon'ble supreme court has held that It is also the cardinal rule of our criminal jurisprudence that the burden in the web of proof of an offence would always lies upon the prosecution to prove all the facts constituting the ingredients beyond reasonable doubt. If there is any reasonable doubt, the accused is entitled to the benefit of the reasonable doubt.
16. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt.
17. In the light of above discussions and reasons I am of the opinion that the prosecution has failed to prove the case against the accused persons beyond reasonable doubt u/sec 24/25/41 of the Assam Forest Regulation, 1891 and hence the accused persons deserves to be acquitted of the charges leveled against them only on the point of benefit of doubt.

ORDER

In view of the above discussions and reasons mentioned above I am of the opinion that the prosecution has failed to prove the case against the accused persons beyond reasonable doubt U/sec 24/25/41 of the Assam Forest Regulation, 1891 and hence they are hereby acquitted from this case and thereby set at liberty only on the point of benefit of doubt.

Make necessary entry in the Judgment register.

The seized article be disposed of as per procedure of law

Given under my hand and seal of this court on this the 3rd day of MAY, 2019 at MARGHERITA COURT.

**SALEH AHAMMAD
SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
MARGHERITA, TINSUKIA**

¹ AIR 1966 SC 1762

APPENDIX:

WITNESSES FROM THE PROSECUTION SIDE:

PW1: KAMALESHWAR BORA

PW2: PRAFULLA GOGOI

WITNESSES FROM THE DEFENCE SIDE: NIL

PROSECUTION EXHIBITS:

EXT 1 IS THE SEIZURE LIST

EXT 1(1), 1(2) ARE THE SIGNATURES OF PW1 & PW2

DEFENCE EXHIBITS: NIL

**SALEH AHAMMAD
SUB-DIVISIONAL JUDICIAL MAGISTRATE (M),
MARGHERITA, TINSUKIA**