

**IN THE COURT OF THE SPECIAL JUDGE ::::::::::: NALBARI**

Present: **Smti S. Bhuyan**  
**Special Judge**  
**Nalbari.**

**Special (W/L) 06/14**

**u/s- 51 of the Wildlife (Protection) Act.**

**State of Assam**

-Vs-

**1. Iftikar Hussain**

S/O- Lt. Chand Mohammad Ali

Vill- Loharkatha

P.S- Mukalmua Dist.- Nalbari (Assam)

**2. Md. Saifuddin Ali**

S/O- Md. Rahimuddin Ali

Vill- Adabari

P.S- Mukalmua Dist.- Nalbari (Assam).....Accused persons

Appearance :-

For the prosecution : Mr. D. Barman, learned PP

For the defence : Mr. Abdul Masjid

Date of evidence : 26/04/2016, 16/07/2018,  
30/05/2016, 25/07/2016,  
27/11/2018, 16/03/2019,  
13/08/2019,

Statement of accused recorded : 11/03/2020

Date of Argument : 15/12/2020

Judgment Delivered : 02/01/2021

**J U D G M E N T**

1. The prosecution case in brief is that on 09/01/2012 at about 9 AM patrolling party of Mukalmua Police Station caught red handed Iftikar Hussain and Saifuddin Ali while they are involved in poaching bird violating section 9/50/51 of the Wildlife (Protection) Act and on search of bag possessed by them found 13 dead birds and air-gun and they are brought to Mukalmua PS and handed

over to forester Harmohan Kalita with dead birds and air-gun. Accordingly Range Forest Officer Manoranjan Barman registered a case under the Wildlife Protection Act against the accused and produced the accused persons before the learned CJM, Nalbari along with seizure report. Forester Harmohan Kalita seized the dead birds, air-gun, air-gun bullet.

2. The statement of accused persons were recorded by forester Harmohan Kalita, post mortem on the dead seized birds were conducted and after completion of the investigation submitted offence report against the accused u/s 51 of the Wildlife Protection Act before the learned CJM, Nalbari and learned CJM, Nalbari transferred the case to JMFC, Nalbari. After recording statement of the witness and accused u/s 313 CrPC committed the case to the court of Sessions as offence u/s 51 of the Wildlife Protection Act is made exclusively triable by the court of Sessions.

3. On appearance of the accused, my learned Predecessor after recording in chief of PWs framed the charge against the accused u/s 51 of the Wildlife Protection Act vide order dated 27/02/2017 and when same was read over and explained to the accused, accused pleaded not guilty and claimed to be tried. Prosecution in order to establish the charge, adduced evidence of 6 numbers of witnesses, exhibited 4 numbers of documents.

4. Now the point for determination is that: i) whether the accused persons Iftikar Hussain and Saifuddin on 09/01/2012 at about 1 PM at Loharkata area under Mukalmua PS killed and hunted 13 nos of wild birds, i.e. 4 nos of "kopou" (spotted dove), 1 no of "Bogoli" (crane) and 8 nos of "hutu-tutu", specified in schedule IV of the Wildlife (Protection) Act in contravention of the provision laid down u/s 9 of the Wildlife (Protection) Act and committed offence u/s 51 of the Wildlife (Protection) Act.

#### **DISCUSSION DECISION AND REASON THEREOF:-**

5. The evidence of PW-1 Kamal Saud is that on 09/01/2012 he was working as forest guard at Forest Office of Nalbari town and

on that day he rush to the Mukalmua Police Station getting information that Mukalmua Police recovered 4 number of dead “hututuka” bird, 8 number of “kupti” bird, 1 number of “bogola” bird one air-gun 223, one air-gun DSR991 air-gun bullet 16 numbers from accused Iftikar and Saifuddin and seized the same vide Ext-1 and Ext-1(1) is his signature. His cross pointed he noticed the death birds at Mukalmua Police Station and seizure was written by police personnel of Mukalmua Police Station and he put his signature at the police station. He further stated in cross at the time of the seizure of the dead birds he was not present and he was present when police hand over the dead birds at their office.

6. PW-2 Mazibar Rahman stated he knows accused persons from the date of occurrence and on that day he went to Mukalmua Police Station at about 11 AM to 12 noon for an incident of assault and at that time ASI Dhiren Das of Mukalmua Police Station show him dead and alive “kopou” and “salika” bird and Police Officer ask him if he identified those birds to which he replied birds are “kopou” and “salika” and police seized the birds vide Ext-2 where he put his signature and police told him that police were seized the birds from the possession of the accused persons and at the police station he meet accused persons. In cross stated he do not know why police obtain his signature in Ext-2.

7. The statement of PW-3 Yakub Ali is that on 09/01/2012 he was working as forest guard at the office of Nalbari, Forest Range. He knows Manaranjan Barman and Harmohan Kalita and on that day Mukalmua Police Station hand over 13 birds at Mukalmua Police Station after calling them and said birds were seized at their office and produced before the Magistrate. As per order of the Magistrate they buried the dead birds and in Ext-1 seizure list Ext-1(2) is his signature. In cross stated Ext-1 is prepared at police station. No other persons present when police hand over birds to them at Mukalmua Police station and he did not witness the incident.

8. The statement of PW-4 Manoranjan Barmanis that on 09/01/2012 he was working as Deputy Ranger at Nalbari Forest Office and police of Mukalmua Police Station inform them that they caught accused persons with 13 numbers of birds and 2 air-guns and ask them to send forest official to bring the accused persons, air-guns and birds and he deputed Harmohan Kalita and Yakub Ali and Harmohan Kalita and Yakub Ali went to Mukalmua Police Station brought the dead birds, air-guns with accused to their office. Harmohan Kalita seized the air-guns and the dead birds and the accused persons were produced before CJM, Nalbari. His cross pointed he had no personal knowledge about the incident and what was done to the dead birds.

9. PW-5 Harmohan Kalita deposed on 09/01/2012 he was working as Forester-II at Nalbari Range Office and on that day getting information from Mukalmua Police Station he along with his staff went to Mukalmua Police Station and police of Mukalmua Police Station handed over 13 numbers of dead birds along with two persons Iftikar and Saifuddin. Thereafter, they produced dead birds and accused before the court and as per direction of the court they buried the birds. In cross stated he cannot remember what kind of birds were handed over to them by police of Mukalmua Police Station. He did not witness the incident. He did not prepare seizure list Ext-1 and did not en-quire anything to the accused persons. He seized dead birds from O/C Mukalmua Police Station.

10. PW-6 Dr. Bhaskarjit Kakoti deposed on 09/01/2012 Dr. Bipin Ch. Kalita as Veterinary Officer at Nalbari Veterinary Hospital, at about 5 PM received 13 numbers of dead birds from Forest Office Nalbari Range for conducting postmortem out of which 8 birds are kupti kopou 1 number bogola (crane) and 4 numbers of non-specific wild birds and postmortem report revealed all the 13 numbers of birds died due to severe cut injury and heavy bleeding. He exhibited postmortem report as Ext-4. He further stated that he worked with Dr. Bipin Ch. Kalita who retired on superannuation.

11. On scrutiny of the statement of PW1 to PW-5 it revealed that dead birds were seized by police of Mukalmua Police Station ASI Hiren Das and prosecution did not adduce evidence of ASI Hiren Das who first seized dead birds with air-gun and air-gun bullet from the possession of accused persons. At the time of submission of offence report, name of ASI Hiren Das not shown in the witness list and only name of Yakub Ali and Kamal Saud given as prosecution witness. On scrutiny of the record, I find learned JMFC recorded the statement of ASI Hiren Das. Accordingly, I have taken judicial notice of the statement of ASI Hiren Das which was recorded by learned Magistrate on 8<sup>th</sup> March 2013 to arrive at the just decision of the case. His statement revealed on 09/01/2012 when he was on duty at Mukalmua Police Station, getting information of poaching bird they went to Loharktha and found two boys with air-gun standing in-front of the house of one person and near the said boys they found 13 numbers of dead birds and seized the same. He did not witness who had killed the bird and got the air-gun and air-gun bullet with the boys.

12. The prosecution allegation against the accused is that on 09/01/2012, accused persons killed 13 numbers of birds by air-gun and Mukalmua Police Station on getting the information of poaching of birds rushed to the place of occurrence apprehended accused and brought them to Mukalmua Police Station along with 13 numbers of dead birds. The dead birds were sent to veterinary Hospital for postmortem. PW-1, PW-3, PW-4 deposed that Forester- I seized dead birds from police when police of Mukalmua Police Station produced the same before PW-5 forester. The statement of PW-2 pointed he went to Mukalmua Police Station in connection with an assault case on 09/01/2012 at about 11 AM to 12 noon and at that time ASI Hiren Das show him some dead and alive "kopou" and "salika" bird. The statement of PW-2 pointed all birds were not dead at the time when police showed him the birds but PW-1, PW-3, PW-4 and PW-5 who are officials of forest department deposed police hand over 13 numbers of dead birds. PW-6 evidence pointed that 13 number of dead birds received by Dr. Bipin Ch. Kalita for postmortem. 1 No. is crane bogola 8 kupti and

4 are non-specific wild birds and postmortem revealed all the 13 birds died due to severe cut injuries and heavy bleeding. The post mortem report pointed severe cut injury on the neck region and all the birds were cut with sharp weapon. The postmortem report pointed cause dead of the birds is due to excessive bleeding due to cut injury which caused with sharp weapon. Prosecution alleged death caused by accused by means of air-gun. No weapon found and seized from the possession of accused person.

#### **Definition of *air gun***

1. In Merriam Webster air-gun is defined: a gun from which a projectile is propelled by compressed air
2. In free dictionary air-gun is defined: a gun discharged by means of compressed air
3. In Collins dictionary air-gun is defined: an air-gun is a gun which is fired by means of air pressure.
4. In Cambridge dictionary air-gun is defined: a gun that uses air pressure to fire a pellet,

#### **Definition of sharp weapon**

An object which is clearly defined and gets cut immediately as it comes in contact with any body is defined as sharp weapon.

13. The aforesaid definition of air-gun and sharp weapon clearly pointed air-gun does not fall within the definition and category of sharp weapon. The sharp weapon and air-gun are two different object. Sharp weapon falls within the category of cutting instrument and air-gun does not falls in this category. The postmortem report revealed dead of birds due to severe cut injury on neck region which is caused by sharp weapon. No sharp weapon recovered from the possession of the accused persons. If the earlier statement of ASI Hiren Das perused 'that dead birds were found on road and near the boys and air-gun found in the hands of two boys' then prosecution version that dead birds were recovered from the bag found in possession of the accused persons is not believable beyond all reasonable doubt and there is sharp contradiction.

14. The statement of PW-1 to PW-5 does not point that accused persons are noticed while shooting birds with air-gun as alleged in the offence report. The name of two witness are given in the offence report namely Kamal Saud and Yakub Ali who was working at Forest Office as Forest Guard and both did not witness the incident at the time of occurrence. The birds were not recovered from the physical possession of the accused person Saifuddin and Iftikar Hussain and there is not a single link connected accused person shooting the birds by air-gun and the cutting the neck of the birds by using sharp cutting weapon. No sharp cutting weapon found and recovered from the possession of accused person. There is no believable cogent unassailable direct and indirect evidence produced by the prosecution to connect the killing of the seized dead birds with the accused. Prosecution has failed to make statement in the offence report and in the evidence that dead birds found are listed in endangered/ scheduled species in Wildlife (Protection) Act. The specification is not made in the offence report. Cause of death of birds and seizure weapon air-gun brings contradiction in the prosecution case against the accused persons which makes prosecution charges against the accused persons not believable beyond all reasonable doubt.

15. From the aforesaid discussion, I come to my definite finding and constraint to hold that prosecution evidence is not sufficient enough to hold accused Iftikar Hissain and Saifuddin guilty of committing offence u/s 51 of the Wildlife (Protection) Act and I hold prosecution failed to bring home the charge u/s 51 of the Wildlife (Protection) Act against the accused persons namely Iftikar Hussain and Saifuddin beyond all reasonable doubt and they are entitled benefit of doubt. Accordingly, accused persons namely Iftikar Hussain and Saifuddin are acquitted from the charge of section 51 of the Wildlife (Protection) Act and they are set at liberty. Seized articles be destroyed in accordance with law.

16. However, their bail bonds shall remain stands for next 6 (six) months u/s-437(A) CrPC.

17. Send back the LCR to the learned committal court along with the copy of judgment.

Judgment is given under my hand and seal of this court on this the 2<sup>nd</sup> day of January, 2021.

(Smti S. Bhuyan)  
Special Judge, Nalbari

Dictated & corrected by me

(Smti S. Bhuyan)  
Special Judge, Nalbari

Typed by:  
Anzima Brahma  
Stenographer Gr-III

## **APPENDIX**

### **A. Prosecution witnesses**

PW-1 Kamal Saud;  
PW-2 Md. Mazibar Rahman;  
PW-3 Yakub Ali;  
PW-4 Manoranjan Barman;  
PW-5 Harmohan Kalita;  
PW-6 Dr. Bhaskarjit Kalita

### **B. Defence witness**

NIL

### **C. Prosecution Exhibits**

Seizure list 1 and seizure list 2;  
Offence Report;  
Postmortem report;

### **D. Defence Exhibit**

Nil.

(Smti S. Bhuyan)  
Special Judge, Nalbari