

**IN THE COURT OF THE SUB-DIVISIONAL JUDICIAL MAGISTRATE (S),  
SONITPUR, TEZPUR**

**C.R. CASE No. 307/2009**

U/S 51 of WLP Act

State

Vs

Sunil Khaklary

.....Accused

**PRESENT: Sri B. Acharyya. LL.M., A.J.S.**

Sub-Divisional Judicial Magistrate(S), Sonitpur, Tezpur

**Appearances:**

For the Prosecution: Sri R. Goswami, Ld. APP.

For the Defence: Sri Bijoy Kumar Basumatary, Ld. Adv.

Charge framed on: 14.07.2015

Date of Evidences: 22.12.2015, 28.07.2016 & 08.05.2017

Date of Argument: 30.04.2019

Date of Judgment: 13.05.2019

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

1. The Prosecution case in brief is that one J. Engti, Forester-I, i/c Sonai Rupai Wildlife Sanctuary submitted the offence report before Forest Department, Assam, Western Assam Wild Life Division, Dolabari, Tezpur, at Kalamati Wild Life Beat, stating that on 02.04.2009 at about 5:00 P.M., accused was apprehended by the forest patrolling party when he has illegally entered inside Sonai Rupai Wild Life Sanctuary.

2. On receipt of an Offence Report to this effect from Sri Jitim Engti, Forester-I, Forest Department, Assam, Western Assam Wild Life Division, Dolabari, Tezpur, cognizance was taken upon by the Learned Chief Judicial Magistrate, Sonitpur and the accused person was summoned to appear before the Court to face trial.
3. The accused person appeared before the Court. The Prosecution side had examined 2 (two) witnesses. Then considering the evidence so recorded and hearing Learned Advocates for both sides, charge u/s 51 of the Wild Life (Protection) Act, 1972, has been framed against the accused and same is read over and explained to him to which he pleaded not guilty and claimed to be tried.
4. The Prosecution side again produced the 2 (two) witnesses for cross examination after charge.
5. The recording of statement of the accused u/s 313 of the Cr.P.C was done to which he denied the questions put to him. The accused person also declined to adduce any evidence in his defence.
6. Heard the arguments put forward by the learned counsel for the accused person and the learned APP for the State and also perused the evidences and materials on record.

**POINT FOR DETERMINATION:**

7. The following Point has been taken up for determination and discussion in the case:

**Whether the accused on 02.04.2009 at 5:00 P.M was found in the Sonai Rupai Wildlife Sanctuary at Kalamati Wild Life Beat, trying to cut down trees by means of axes and other weapons etc., thereby trying to destroy the habitation of wildlife without procuring permission from the Chief Wildlife Warden or from the Forest Officer and thereby contravened the provisions of Sections 9/27/29/31/50 of the said Act and thereby committed an offence under Section 51 of the Wildlife (Protection) Act, 1972?**

**DISCUSSION, DECISION & REASONS THEREOF:**

8. Sri Kamal Dhar as PW 1 in his evidence deposed that he knows the informant. On 02.04.2009 he was posted as Forest Guard at Kalamati Forest Range Gadajuli. On that day at about 3:00 P.M., he along with other Forest Guard and 2 (two) Home Guard personnel went for patrolling at Gadajuli area. At the time of patrolling he saw

the accused coming in the road from the opposite direction in a bicycle and as per the instruction given by Forester-I, Jitim Engti, he arrested the accused then and there. Further he stated that the accused which is present at the dock is the same person whom they arrested on the day of incident. They have seized 1 (one) bicycle and 1 (one) axe from the possession of the accused and later they handed over the seized articles to the Forest Office. Thereafter they prepared the seizure list and he has given his signature on it. Ext. 1 is the seizure list wherein Ext. 1(1) is his signature. At the time of incident human entry was restricted in the forest area. The accused entered the forest area without having any proper permission. Hence, Forester-I has filed this case against him.

In his cross examination, PW 1 has stated at the time of incident he was at Gadajuli Forest Camp and was member of the patrolling party and was leading the party. There was no list of patrolling party. He had caught the accused on the road. He found a "Karat" and "fanta" with the accused. He denied the fact that he did not seize axe and Fanta from the possession of accused. He also stated that road outside forest area is for public. He also denied the fact that accused was apprehended from the public road and not from the forest area. He has prepared the seizure list but he did not go along with patrolling party. The seizure list was prepared at office and he gave his signature at office. He also denied the fact that on the date of occurrence accused did not enter into the forest area and did not commit any offence.

9. Mantu Nath as PW 2 had deposed that he knows the informant and on 02.04.2009 he was posted at Sonai Rupai Wildlife Sanctuary at Gadajuli Camp. On that day when he along with Kamal Dhar, Jitim Engti and 2 (two) other Home Guard personnel was doing patrolling at about 3:00 P.M inside the Forest Area, they saw the accused at the bicycle inside the forest area. Then they arrested the accused and take him to the Range Office. As per his knowledge accused has entered the forest area without having proper permission. They seized 1 (one) bicycle and 1 (one) axe from the possession of the accused person. Ext. 1(2) is his signature. At the time of incident human entry was restricted in the forest area.

In his cross examination, PW 2 has stated he do not remember the date of incident. He was at Sonai Rupai at Forest guard camp. The place of occurrence is near Arunachal Pradesh and has gout. Road passing on the sides of the forest area. He did not seize any logs from road. He was going inside the sanctuary to cut tree. As per the offence report the accused was arrested for violation of Section 144 of Cr.P.C

order in forest area. Section 144 of Cr.P.C order applied in Arunachal Pradesh border in North. He did not see any objectionable wood, forest produce or animals. Ext. 1 was signed by him at Range Office and it was written by Engti. They handed over accused at Range Office. He denied the fact that he saw the bicycle and axe recovered from Malkhana of Range Office which was seized from the accused. He also denied the fact that he had falsely implicated the accused in this case and found no articles from his possession. He does not remember if Forester-I affixed any label in the seized articles. He did not see the seized cycle and Karat in Court at the time of cross examination. He does not know if seized articles were produced in the Court. He also denied the fact that he has deposed falsely and accused was never found at the place of occurrence.

10. Upon appreciation of the evidences and materials on record, from the evidence of PW 1 it appears that though he claims that he apprehended the accused person inside the Sonai Rupai Wild Sanctuary but while cross examination PW 1 has clearly admitted that on the date of alleged incident he was patrolling in the road of the said forest which is regularly used by common people. He nowhere uttered that he along with forest staffs were patrolling inside the forest. It has clearly come out from the evidence of PW 2 that PW 1 did not seize any wood or logs from the accused and the seizure list itself was prepared at the Forest Range Office. Therefore, when the seizure itself is questionable, then it is quite doubtful regarding the entry of the accused in the Sonai Rupai Wild Life Sanctuary and more so entry is immaterial when seizure is in question. Seized bicycle was also not produced in the court. PW 1 himself had admitted in his evidence that the forest has a Road for common people and thus in the absence of any sketch map indicating the place of occurrence, it is difficult to arrive at a conclusion that accused was apprehended from inside the forest area.
11. Moreover, PW 2 did not see any objectionable wood, forest produce or animal with the accused. Thus it can be stated that a person cannot and shall not be arrested in a forest area upon mere presumption of any offence to which there is no strict proof. Thus, in the absence of any major evidence which indicates to the entry of the accused in Sonai Rupai Wild Life Sanctuary on the date of alleged incident and the failure on the part of the forest official to forward any seized weapon had strike down the prosecution case. Thus on the basis of the above discussion, it has become clear that the place of occurrence is itself vague as to whether it falls under the Forest Range or not and therefore the benefit of this goes to the accused. Hence it can be said that the complainant has failed to prove that the accused has entered the Forest

Range with weapons trying to destroy the habitation of wildlife and thereby contravened the provisions of Sections 9/27/29/31/50 of the said Wild Life (Protection) Act and punishable under Section 51 of the Wild Life (Protection) Act, 1972.

12. Hence it can be said that Complainant/ Prosecution has failed to prove the allegation against the accused person beyond reasonable doubt. In view of above discussion and considerations, it can be said that the alleged offences have not been established against the accused and hence he is entitled to be acquitted of the offences under Section 51 of the Wild Life (Protection) Act, 1972 and the aforesaid Point for determination of this case are decided in favour of the accused.

### **ORDER**

Hence I hold that accused person Sunil Khaklary is not guilty of committing offences punishable under Section 51 of the Wild Life (Protection) Act, 1972. Accordingly he is acquitted from the offences punishable under Section 51 of the Wild Life (Protection) Act, 1972 and is set at liberty forthwith.

The bail bond of the accused person shall stand cancelled and surety shall be discharged after expiry of 6 (six) months period from today.

The case stands disposed of on contest.

The Judgment is delivered in the open Court in presence of the accused person and his Advocate. The Judgment is given under my hand and seal of this Court on this the 13<sup>th</sup> day of May, 2019.

(B. Acharyya)

SDJM(S), Sonitpur, Tezpur

**Appendix:**

**Prosecution Witness:**

PW 1: Sri Kamal Dhar

PW 2: Sri Mantu Nath

Documents Exhibited by Prosecution:

Ext. 1: Seizure List

Ext. 1(1): Signature of Seizure Witness (PW 1)

Ext. 1(2): Signature of Seizure Witness (PW 2)

**Defence Witness:** Nil

Documents Exhibited by the defence: Nil

(B. Acharyya)  
SDJM(S), Sonitpur, Tezpur