

IN THE COURT OF JUDICIAL MAGISTRATE, 1ST CLASS, KOKRAJHAR

C.R. case no. 890/2010

u/s 24(a)/25(f) of AFR,1891

State

vs

Budu Kujur

Som Tudu

Soniram Mardi

Mongal Hasda

Jitendra Tudu

Dewan Mardi

Budrai Hasda

Bhuku Hasda

Mongal Soren

Buduram Toppo

Rajesh Murmu

Pransis Toppo

Vinad Tudu

Kanuram Kisku

Stephen Baskey

Karma Lakra

Brindaban Ekka

Lakhiram Soren

Sonu Murmu

Jeta Kisku

Simon Tudu

Mohan Murmu

Somai Tudu

Jotindra Hasda

Sitaram Tudu

Pagu Hasda

Ramen Tudu

Daibor Soren

.... accused persons

Present :- Sri N. Boro,

J.M. 1ST Class, Kokrajhar.

For the prosecution ;- Sri L. Barman, APP

For the defence ;- Shyam Tudu, advocate

Evidence recorded on ;- 8/5/2014, 11/6/2014, 28/7/2014

Argument heard on ;- 18/9/2014

Judgment delivered on ;- 9/10/2014

JUDGMENT

- 1) Prosecution story, in brief, is that complainant namely Manik Ch. Das, Range officer, Haltugaon Division stated that on 30/10/2010, at about 4 p.m. he along with Bipul Saikia, Circle officer, Kokrajhar, DFO, Haltugaon Division, Assam police personnel and staffs went on eviction drive at Lungsung Block under Chirang Reserve Forest. Complainant and his team found accused persons at Lungsung area, felling trees and clearing jungles for purpose of making home and cultivation. Complainant and his team could arrest 33 accused persons and others managed to escape. On completion of investigation of the case, complainant submitted offence report u/s 24/25 of AFR, 1891, against accused persons namely 1) Budu Kuzur, 2) Som Tudu, 3) Soniram Mardi, 4) Less Soren, 5) Mangal Hasda, 6) Jitendra Tudu, 7) Sukla Murmu, 8) Dewan Mardi. 9) Budrai Hasda, 10) Bhuku Hasda, 11) Mangal Soren, 12) Buduram Toppo, 13) Rajesh Murmu, 14) Pransis Toppo, 15) Vinad Tudu, 16) Kanuram Kisku, 17) Stephen Baskey, 18) Karma Lakra, 19) Brindaban Ekka, 20) Lakhiram Tudu, 21) Lal Murmu, 22) Lakhiram Soren, 23) Sonu Murmu, 24) Jeta Kisku, 25) Simon Tudu, 26) Mohan Murmu, 27) Somai Tudu, 28) Jatindra Hasda, 29) Sitaram Tudu, 30) Jitu Tudu, 31) Pagu Hasda, 32) Ramen Tudu, 33) Daibor Soren. During the period of inquiry of the case, accused Sukla Murmu and Jitu Tudu were found untraceable and therefore, the case against them filed. Accused Less Soren died and therefore, the case against accused Less Soren abated on his death. Evidence of complainant and witnesses were taken first. After having heard both sides and considering the material available on record, the charge u/s 24(a)/25(f) of AFR, 1891 was framed against accused persons. The particulars of charge u/s 24(a)/25(f) of AFR, 1891, were read over and explained to accused persons. Accused persons pleaded not guilty and claimed to be tried.

- 2) Prosecution side examined four witnesses. Accused were examined u/s 313 Cr. P.C. and their statements were recorded. The pleas of accused persons were of total denial and refused to adduce evidence. I heard argument of the case from both sides.

POINTS FOR DETERMINATION:-

- a) whether the accused persons on 30/10/2010, in a body, trespassed into the Lungsung area under Chirang Reserve Forest and thereby committed an offence punishable u/s 24(a) of AFR, 1891 ?
- b) whether the accused persons on 30/10/2010, in a body, cleared Jungle at Lungsung area under Chirang Reserve Forest for purpose of cultivation or any other purpose and thereby committed an offence punishable u/s 25(f) of AFR, 1891 ?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF :-

- 3) Manik Ch. Das, complainant of this case deposing as p.w.-1 stated that on 30/10/2010, he was working at Haltugaon Division as Forest Range officer. He stated that on that day, he along with DFO, Haltugaon division, Circle officer Bipul Saikia, Assam police force etc. went to Lungsung Block to evict encroacher. He stated that in the Lungsung Reserve, thirty three persons were clearing jungle and making houses in that area. He stated that they apprehended those thirty three persons and dismantled structure of houses. He stated that after completion of investigation of the case, offence report was submitted u/s 24/25 of AFR, 1891. Ext.-1 is the said offence report and ext.-1(1) is his signature. Ext.-2 is seizure list and ext.-2(1) is his signature. Ext.-3 is accused handing over list and ext.-3(1) is his signature.
- 4) During cross-examination, p.w.-1 stated that on that day, DFO, SDC were also present along with them but he did not make them as witnesses of this case. Members of Eco Task Force were also present on that day and he did not make them witnesses of this case. Police personnel were also along with them on that day in connection with this case but he did not make them witnesses of this case. There is a village near the Lungsung reserve forest. They set out at 11 a.m. There were many people and they could apprehend only thirty three people. DFO directed him to record statements of accused persons and he recorded statements of accused persons at the place of occurrence. They brought apprehended persons to their forest office. They did not seize anything from accused persons. Accused persons tried to run away on seeing them on the day of occurrence of the incident. It is not true that they did not apprehend accused persons inside the jungle and they did apprehend accused persons from market. It is not true that he filed false complaint against accused persons.
- 5) Ajoy Kumar Narzary, p.w.-2, stated that he knows complainant and he knows some accused persons. He stated that he recognized accused namely 1) Jeta Kisku, 2) Buduram Toppo, 3) Budrai Hasda, and 4) Som Tudu and other accused persons were also present on that day. He stated that on 30/10/2010, he along with DFO, Magistrate Bipul Saikia, Bishmari out post police, Eco Task Force, Jharbari Forest Ranger, Ultapani Ranger etc. went to Lungsung reserve forest to evict encroacher. He stated that on the day of occurrence of the incident about 150 people were making houses etc. on the place of occurrence after clearing jungle. He stated that they apprehended thirty three people and others ran away. He stated that later, they forwarded accused persons to court. Ext.-2 is the seizure list and ext.-

2(2) is his signature.

- 6) During cross-examination, p.w.-2 stated that about 8/10 police personnel were along with them. Accused persons were cutting jungle at the place of occurrence. They did not recover anything from accused persons. They forwarded accused persons to court. Their ranger recorded statements of accused persons and at that time, he was near that place. It is not true that they did not apprehend accused persons in the jungle and they apprehended accused persons at the time of returning from Karigaon market. It is not true that they harassed accused persons filing false complaint against them.
- 7) Amiya Mushahary, p.w.-3, stated that he does not know complainant and he forgets accused persons. He stated that the incident was occurred in the year 2010, at about 4 p.m. He stated that on that day, he along with Magistrate Bipul Saikia, DFO, staffs etc. went to Lungsung area on duty. He stated that they found accused persons on that day, clearing jungle and making houses and there were about 100 persons. He stated that accused persons ran away on seeing them and they could apprehend thirty three persons. He stated that accused persons cleared about 20/ 30 hectors land by cutting jungle. He stated that they forwarded accused persons to court. Ext.-2 is seizure list and ext.-2(3) is his signature.
- 8) During cross-examination, p.w.-3 stated that he forgets the date of occurrence of the incident. He forgets how many 'Jawans' were along with them from Eco Task force. Accused persons cut jungle with 'dao' (chopper), axes etc. Accused persons were clearing jungle for making houses and there were about 300/400 persons in the jungle on that day. Accused were run here and there on seeing them. They did not recover anything from accused persons. It is not true that they filed false complaint against accused persons and they apprehended accused persons when they had been returning from market. It is not true that accused were not involved with this case.
- 9) Dipak Basumatary, p.w.-4, stated that he knows complainant and accused persons. He stated that the incident occurred in the year 2010, at about 4 p.m. He stated that on that day, he along with Magistrate Bipul Saikia, staffs, police went to the Lungsung area. He stated that accused persons were cutting jungle and making houses. He stated that there were many people and they could apprehend only thirty three persons. He stated that they forwarded accused persons to court. Ext.-2 is the said seizure list and ext.-2(4) is his signature.
- 10) During cross-examination, p.w.-4 stated that he forgets accused persons and he also forgets who was complainant of this case. He forgets name of DFO who was present along with them on the day of occurrence of the incident. He cannot say how many people were entered into the jungle. Accused were cutting jungle and making huts in the jungle. He cannot say name of villages of accused persons. They did not seize anything from accused persons. They recorded statement of accused persons in the jungle. It is not true that they captured accused persons at the time of returning from market. It is not true that he has stated falsely against accused persons.
- 11) The points for discussion are taken together for sake of convenience in discussion. In this case, the allegations against accused persons were for encroachment at Lungsung area under Chirang Reserve Forest and for attempt to make huts clearing jungle in that area. According to prosecution witnesses, on 30/10/2010, at about 4 p.m., when they had reached

at Lungsung area then they saw large people, in a body, engaged in cutting jungle and making huts clearing about 20/30 hectores forest land. Lungsung area is under Chirang Reserve forest which is property of State government. Prosecution witnesses are forest officer appointed by the state government and they exercised power on behalf of state government vested on them. The evidence of p.w.-1, p.w.-2, p.w.-3 and p.w.-4 are clear regarding of the fact that they captured thirty three accused persons in the reserve forest and others were managed to escape on seeing complainant and his team. However, from the evidence of prosecution witnesses, it has clear that they failed to find anything from the possession of accused persons at the time of capturing them. P.w.-1 stated in his evidence that they dismantled erected huts alleged to have been made by accused persons in the jungle. The fact that accused persons cleared jungle and made huts in the place of occurrence lacks force. One cannot clear jungle and make huts without some instrument and material. So, the fact that p.w.-1 and his team did not find anything in possession of accused persons implies that accused persons were not engaged in clearing and making huts on the day of occurrence of the incident. One cannot cut tree without a cutting instrument. P.w.-1 also did not seize materials of dismantling huts so as to infer that accused persons had made huts for purpose of residing etc. in the reserve forest clearing jungle. Mere stating of a fact is not enough sometimes when there are many material particulars available for taking into consideration of the occurrence of the incident. It is true that accused were found inside the jungle on the day of occurrence of the incident and they were captured. It is not believable of the fact that accused persons were apprehended by p.w.-1 and his team on road. It is established that on the day of occurrence of the incident DFO, Magistrate etc. were also accompanied with p.w.-1, p.w.-2, p.w.-3 and p.w.-4. Therefore, it can be said that accused were rightly apprehended in the jungle for trying to encroach reserve forest land. Entering into the Lungsung area, which is a reserve forest under Chirang reserve forest, without permission from competent authority amount to trespass.

- 12) Thus, in view of the above discussion of evidence and observation, in my view, prosecution side proved the charge u/s 24(a) of AFR, 1891, against accused persons beyond all reasonable doubt and prosecution side failed to establish the charge u/s 25(f) of AFR,1891, against accused persons beyond all reasonable doubt.
- 13) Hence, I held accused persons guilty for committing offence punishable u/s 24(a) of the AFR, 1891 and convicted there under.
- 14) Heard the accused persons on sentence.
- 15) After having heard accused persons and considering the fact that accused persons are rustic villagers and illiterate persons, I found accused persons are entitled to the benefit of provision of Probation of Offenders Act. Accused persons are admonished in the court and released as per provision of section 3 of Probation of Offenders Act.

Given under my hand and seal of this court on this 9th day of October, 2014.

Typed and corrected by :-

(Sri N. Boro)