

**IN THE COURT OF SH. DEEPAK WASON: ACMM (SPL. ACTS):
CENTRAL DISTRICT: TIS HAZARI COURTS: DELHI**

CC No. 102/1
Wild Life Vs. Bholu

JUDGMENT

- (a) Serial no. of the case :02401R0308002013
(b) Date of commission of offence :15.01.2011
(c) Name of complainant :Sh. R.R. Meena, Wild Life Inspector, Delhi.
(d) Name, parentage and residence :**Bholu**,
S/o Sh. Rajesh,
R/o Village Nangal Thakran,
Delhi.
(e) Offence complained of/ proved :U/s 9 & 49 of the Wild Life (Protection) Act, 1972 punishable U/s 51 of the said Act.
(f) Plea of accused :Pleaded not guilty.
(g) Final order :**Acquitted**
(h) Date of such order :30.04.2016

Date of institution : **20.06.2013**
Arguments heard/order reserved : **11.04.2016**
Date of Judgment : **30.04.2016**

Brief statement of the reasons for the decision:-

1. The complainant Sh. R.R. Meena, WLI filed the present complaint u/s 55 of the Wild Life (Protection) Act, 1972 in short the “**Act**” punishable u/s 51 of the Act against accused Bholu for hunting a peacock

which is specified under Schedule-I of the Act.

2. Accused was put on trial with the allegations that on 15.01.2011 at about 1:30 pm at plot of Ranbir, Village Bajidpur Thakran, Delhi, he hunted a peacock with the help of catapult (gulel) and marble (kancha) and was apprehended red handed at the spot and above said catapult and marble were recovered from his possession alongwith dead peacock haunted by him.

3. Upon filing of complaint, accused was summoned for his appearance. Copies of complaint and documents were supplied to him.

4. In order to substantiate the allegations, the complainant examined seven witnesses in pre-charge evidence.

5. **PW-1 is SI Ramesh Chand.** He is the Investigating Officer of the present case and has deposed that on 16.01.2011, he was posted at PS Bawana. He has further deposed that after registration of FIR of the present case, the investigation was assigned to him. He has further deposed that he received rukka, mark A and copy of FIR, mark B and reached the spot i.e plot at Village Wazidpur Thakarana, Delhi-39, where he met HC Brijesh Kumar who handed him a dead peacock, one catapult (gulel) and one kancha. He has further deposed that he seized above said catapult (gulel) & kancha vide seizure memo Ex. PW-1/A and dead peacock as Ex. PW-1/B. He has further deposed that complainant Ashwani and Ct. Rajesh Kumar from PS Bawana were also present there. He has further deposed that he inspected the spot and prepared site plan at the instance of complainant Ex. PW-1/C. He has further deposed that HC Brijesh also produced the accused Bholu, interrogated him and arrested him vide

memos Ex. PW-1/D & PW-1/E, recorded his disclosure statement of accused Ex. PW-1/F and recorded statement of witnesses. He has further deposed that he got the accused medically examined and produced him before the concerned Court. He has further deposed that he got conducted the post-mortem on the dead body of peacock and buried in the field of Village Dariyapur in the presence of senior officer i.e Inspector / SHO Raj Singh, PS Bawana vide burried memo Ex. PW-1/G. He has further deposed that file of the present case was handed over to Wildlife Department vide Road Certificate Ex. PW-1/H.

6. **PW-2 is Dr. Dinesh Jaimini, Veterinary Assistant Surgeon.** He has deposed that on 18.01.2011, he was posted as Veterinary Assistant Surgeon at Dariyapur, Delhi-39 and on that day, SI Ramesh Chand from PS Bawana produced a dead peacock before him with a request to conduct post mortem upon which he conducted post mortem on the dead body of said peacock vide detailed report which is Ex. PW-2/A. He has further deposed that during examination, he found that some feathers were missing and some feathers were broken and lacerated injury on the right side of the neck and on the right leg of the above said peacock. He has opined that the said peacock might have been died due to respiratory arrest caused by shock and trauma. He admitted as correct that the said shock and trauma can be caused by hitting from any hard object.

7. **PW-3 is SI Deepak Purohit.** He has deposed that on 17.01.2011, he was posted at PS Bawana and on that day, at the request of SI Ramesh Chand, he produced accused Bholu before the Court with the request to send him in judicial custody. He has further deposed that he also produced dead peacock in the concerned Court alongwith application with the request to pass an order for postmortem of the said peacock. He has

further deposed that Court has passed the order for post mortem and disposal of the dead body of peacock upon which IO / SI Ramesh Chand got conducted the post mortem of said peacock.

8. **PW-4 is HC Brijesh Kumar.** He has deposed that on 15.01.2011, he was posted at PS Bawana and on that day, on receiving DD no. 40 B, he alongwith Ct. Subhash reached the spot i.e plot of Ranbir Singh, Gaon Bajit Pur Thakran, Delhi-39, where complainant Ashwani Kumar produced accused Bholu, one dead peacock, one catapult (gulel) and one marble (kancha) and complainant told him that accused Bholu had killed the said peacock with catapult and marble. He has further deposed that he recorded the statement of complainant Ashwani Kumar Ex. PW-4/A, prepared pabandinama of the accused with the direction to be present alongwith catapult (gulel) and marble when his presence would be required in the PS. He has further deposed that he took the dead body of peacock to Raja Garden Bird Care Centre and requested them to get the dead body preserved but they refused by saying that the dead body of the peacock may be preserved in the Office of Animal Care Centre situated at Tis Hazari upon which he reached at Govt. Animal Care Centre, Tis Hazari and they told him that the dead body of peacock may be preserved in the Regional Office of Birds and Animals situated at Village Dario Pur upon which he reached there but the same was found locked. He has further deposed that thereafter, he talked to Dr. Gemini, Incharge of the above said hospital on the telephone, who told HC Brijesh Kumar that there is no facility to preserve the dead body of peacock in the above said hospital and told that he will conduct the post mortem on the dead body of peacock on coming Monday. He has further deposed that he discussed the matter with his senior officers and the dead body of peacock was kept in safe custody at PS under the security of Santri. He has further deposed that he kept DD no.

40 pending. He has further deposed that on 16.01.2011, FIR of the present case was registered after discussing with the officers of Wildlife Department. He has further deposed that on the next day, he alongwith Ct. Rajesh visited the spot where complainant met him. He has further deposed that in the meantime, IO / SI Ramesh Chander reached the spot, prepared site plan at the instance of complainant. He has further deposed that thereafter, he alongwith IO / SI Ramesh Chander, Ct. Rajesh and complainant Ashwani reached the house of accused Bholu, IO arrested the accused, conducted his personal search, seized the above said catapult and marble after taking the same from the possession of the accused. He has further deposed that they came back to PS where IO seized the dead body of peacock, recorded the disclosure statement of accused, deposited the case property in the malkhana. He has further deposed that on 18.01.2011, after getting the post mortem conducted, the dead body of peacock was buried.

9. **PW-5 is Constable Rajesh.** He has deposed that on 16.01.2011, he was posted at PS Bawana and on that day, HC Brijesh Kumar joined him and thereafter, he alongwith HC Brijesh left the PS for the spot i.e field of Ranbir Singh at Bajeet Pur Thakran, Delhi. He has further deposed that in the meantime, SI Ramesh Chand, IO of the present case reached the spot. He has further deposed that complainant Ashwani was called at the spot. He has further deposed that SI Ramesh Chander prepared the site plan Ex. PW-1/C at the instance of the complainant. He has further deposed that he alongwith IO / SI Ramesh Chander, HC Brijesh and complainant Ashwani reached at the house of accused Bholu, arrested him and conducted his personal search vide memos Ex. PW-1/D & PW-1/E on the identification of the complainant. He has further deposed that IO seized the above said catapult and marble vide seizure memo Ex. PW-1/A.

He has further deposed that thereafter they came back to PS where IO seized the dead body of the peacock vide seizure memo Ex. PW-1/B. He has further deposed that IO recorded disclosure statement of accused Ex. PW-1/F, deposited the case property in malkhana.

10. **PW-6 is Sh. R.R. Meena i.e Wild Life Inspector**, who is the complainant in the present case. He has deposed that he has been working as Wildlife Inspector in the above said Office since 1990 and has been authorized to file complaint in the Court under Rule 49 of the Delhi Wildlife (Protection) Rules, 1973 and a notification Ex. PA has been issued by the Government in this regard. He has further deposed that case file of FIR no. 14/11, PS Bawana, U/s. 51 of the **Act** including the photographs of dead peacock was marked to him by the department. He has further deposed that after going through the file seizure memo and other documents which are already exhibited on the judicial record of the present case, statement of witnesses, he found that a *prima facie* case under Section 9/49 of the **Act** was made out against the accused which is punishable under Section 51 of the said Act and he filed the complaint under Section 55 of the **Act** in the concerned Court Ex. PW-6/A.

11. **PW-7 is Sh. Ashwani**. He is one of the eye-witness in the present case and at whose behalf, the present proceedings were initiated. He has deposed that on 15.01.2011 at noon, he was sitting on the roof of his above said house and at about 1:30 p.m, he saw towards the vacant plot lying behind his above said house and found that accused Bholu was having a gulel (catapult) in his right hand with which he attacked a live peacock sitting on a tree, due to which the said peacock received injuries and fell down. He has further deposed that he immediately reached in the above said plot where accused was putting the dead peacock in his plastic

bag and apprehended him and in the meantime, his neighbours also gathered there and one of them informed the police and police officials reached the spot. He has further deposed that he handed over the accused, dead peacock and gulel etc. to the police. He has further deposed that IO recorded his statement Ex. PW-4/A, seized the dead peacock alongwith plastic bag vide seizure memo Ex. PW-1/B, seized the said catapult with marble vide seizure memo Ex. PW-1/A, prepared site plan at his instance Ex. PW-1/C, arrested the accused vide arrest memo Ex. PW-1/D.

12. The following documents were relied upon by the complainant and Exhibited during the complainant's evidence:

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|---|------------------|
| a. Seizure memo of gulel and kancha | Ex. PW1/A |
| b. Seizure memo of dead peacock | Ex. PW1/B |
| c. Site plan | Ex. PW1/C |
| d. Arrest memo of accused | Ex. PW1/D |
| e. Personal search memo of the accused | Ex. PW1/E |
| f. Disclosure statement of accused | Ex. PW1/F |
| g. Buried memo of peacock | Ex. PW1/G |
| h. Road Certificate | Ex. PW1/H |
| i. Detailed memo of post mortem report | Ex. PW2/A |
| j. Statement of complainant Ashwani | Ex. PW4/A |
| k. Complaint | Ex. PW6/A |

13. After pre charge evidence, a charge was framed against accused Bholu on 26.05.2014 Under Section 9 & 49 of Wildlife Protection Act, 1972 punishable under Section 51 of the **Act** to which accused

pleaded not guilty and claimed trial.

14. In post charge evidence, complainant has examined seven witnesses in support of its case.

15. PW-1 is SI Ramesh Chand, PW-2 is Dr. Dinesh Jaimini, Veterinary Assistant Surgeon, PW-3 is SI Deepak Purohit, PW-4 is HC Brijesh Kumar, PW-5 is Constable Rajesh, PW-6 is Sh. R.R. Meena & PW-7 is Sh. Ashwani were examined in post charge evidence. They adopted the same testimony in post-charge evidence which was recorded during their pre-charge evidence. All the witnesses were cross-examined by the Ld. defence counsel.

16. After completion of the post charge evidence, statement of accused Bholu recorded under Section 313 of Code of Criminal Procedure (hereinafter called Cr.P.C). Accused denied all the allegations and stated that he was falsely implicated in this case and further submitted that he wants to lead defence evidence.

17. In support of claim and contentions, accused examined Sh. Sanjay Kumar as DW1. He has deposed that on 15.01.2011, accused Bholu was with him from 11:00 a.m to 5:00 p.m and on that day, Sh. Ashwin Kumar and another person have hunted a peacock and falsely implicated the accused in the present case because the above said two persons belonged to higher caste and accused belonged to schedule caste. He has further deposed that he knew Sh. Ashwani Kumar as they belong to the same village and the house of accused is in the same gali where he is residing. He has further deposed that accused Bholu has no concern with the present case and he has been falsely implicated. This witness was

cross-examined by Ld. APP and in his cross-examination, he has deposed that he is a daily wage labourer and on 15.01.2011, he and accused Bholu were present at his home. He has further deposed that on the same day, Ashwani and another person might have gone to their field for work. He has further deposed that Ashwani Kumar and another person namely Ranvir Singh have hunted the peacock with bamboo stick at Bajitpur Thakran in the forest area at about 4:45 p.m in his presence. He has further deposed that on that day, he did not go to his work as he was ill. He has further deposed that he asked them not to kill the peacock but they did not listen to him. He has further deposed that on 15.01.2011 at about 4:45 p.m, accused Bholu was at his work. He has further deposed that accused Bholu went for his work in the morning and he saw him leaving the home. He has further deposed that he has no knowledge whether any quarrel took place between accused Bholu, Ashwani and Ranvir relating to the caste. He has further deposed that in his presence, Ashwani and Ranvir had not passed any derogatory remarks relating to the caste.

18. It is a matter of record that vide order dated 30.10.2015, defence evidence was closed and matter was fixed for final arguments.

19. Complainant has to prove that accused haunted a peacock with the help of catapult and marble and he was apprehended at the spot.

20. Ld. APP for the state has argued that all the complainant witnesses have fully supported the case of the prosecution and complainant proved its case beyond reasonable doubts.

21. Learned defence counsel, on the other hand, argued that prosecution has miserably failed to prove its case against the accused.

Learned defence counsel further argued that there are several material contradictions in the statement of prosecution witnesses, nothing was recovered from the possession of the accused and he has been falsely implicated in this case as accused belongs to schedule caste. Ld. defence counsel has also prayed that as the prosecution failed to prove case against the accused beyond reasonable doubt, the accused may be acquitted for the alleged offences.

22. I have given my thoughtful consideration to the submissions in advance on behalf of both the parties and have gone through the relevant records and also the relevant provisions of the Act. Relevant provisions of Section 9 & 49 of the Act to reproduce for ready reference:

9. Prohibition of hunting - *No person shall hunt any wild animal specified in Schedules I, II, III and IV except as provided under section 11 and section 12.*

49. Purchase of captive animal, etc, by a person other than a licensee. - *No person shall purchase, receive or acquire any captive animal, wild animal, other than vermin, or any animal article, trophy, uncured trophy or meat derived therefrom otherwise than from a dealer or from a person authorised to sell or otherwise transfer the same under this act.*

23. Investigation of the present case was started at the instance of one Sh. Ashwani Kumar i.e CW-7. Hence, his testimony requires careful scrutiny. The prosecution has to prove its case beyond reasonable doubt. However, bare perusal of testimonies of CW-7 as well as other witnesses reveal several contradictions in their evidence. As per the examination-in-chief of CW-7 on 15.01.2011, police officials reached at the spot and he handed over the accused, dead peacock and gulel to the police and IO seized the said dead peacock vide seizure memo Ex. PW-1/B. Certain other

documents were also prepared. This witness was cross-examined at length. In his cross-examination, he has deposed that four police officials reached at the spot and he did not hand over the peacock to the police. He has further deposed that police has taken the peacock, gulel from the possession of the accused on the spot without putting the same in any cloth. He has specifically deposed that police did not come to him after 15.01.2011 regarding investigation. Hence, as per his deposition, he has never joined the investigation after 15.01.2011 but, perusal of entire record shows that Ex. PW-1/B i.e seizure memo of peacock, PW-1/A i.e seizure memo of gulel and kancha were prepared on 16.01.2011 which bear the signature of Ashwani. When police never visited him after 15.01.2011 then how he signed these documents on 16.01.2011. At this stage, it would be relevant to go through the testimony of PW-4 who reached first at the spot alongwith one Constable Subhash. His testimony shows that he did not take possession of the case property rather case property was given to the accused. Hence, there is a material contradiction with regard to the testimony of Ashwani and this witness with regard to the possession of case property. Witness Ashwani has deposed that four officials visited at the spot. However, as per the testimony of HC Brijesh Kumar, he alongwith Ct. Subhash reached at the spot. Hence, as per his testimony, two police officials reached at the spot. PW-4 i.e HC Brijesh Kumar has further deposed that on the next day i.e 16.01.2011, he alongwith Ct. Rajesh visited the spot where complainant met them and certain documents were prepared. He has further deposed that SI Ramesh also joined the proceedings on 16.01.2011 and thereafter, they all alongwith Ashwani reached at the house of accused Bholu and accused Bholu was arrested from his house and case property was taken from the possession of accused. Hence, testimony of PW-4 is showing various contradictions as in comparison to the testimony of PW-7 i.e Ashwani

Kumar. PW-7 has nowhere deposed that on 16.01.2011, he went to the house of accused Bholu and on 16.01.2011, accused Bholu was arrested. PW-7 has even nowhere deposed that case property was recovered on 16.01.2011 and was taken into possession by the police. As per the testimony of PW-7, accused was arrested at the spot and case property was also taken into possession at the spot. Hence, there are various serious contradictions in the testimony of PW-7 as well as PW-4 which creates serious doubt in the story of prosecution. It is pertinent to mention here that Ct. Subhash had also reached at the spot but he has not been examined by the complainant.

24. Further, as per the testimony of PW-1, all the proceedings were conducted on 16.01.2011 and complainant has also joined the proceedings with him. As stated above, PW-7 in his cross-examination has specifically deposed that police officials did not come to him after 15.01.2011 regarding investigation.

25. Further, PW-4 HC Brijesh Kumar has deposed that on 15.01.2011, he went at the spot and complainant Ashwani produced accused alongwith dead peacock, catapult and marble to him. It is very surprising fact that instead of seizing the catapult and marble immediately, he left the same in the possession of the accused. Hence, it creates doubt as according to the prosecution version, catapult and marble were the things used in hunting whose seizure immediately is necessary. The dead peacock was not seized on 15.01.2011 i.e the day of incident by HC Brijesh i.e PW-4. Post-mortem of the peacock was also not conducted on the same day and rather it was done on 18.01.2011.

26. Further, PW-3 SI Deepak has deposed that on 17.01.2011, he

produced accused and dead peacock before the Court. It shows that there is delay of two days in producing the case property. As per Section 50 (4) of the Act, any person detained or things seized shall forthwith be taken to the Magistrate. Hence, mandatory compliance of Section 50 (4) of the Act has not been complied with. It also creates doubt in the story of the prosecution.

27. PW-2 i.e Dr. Dinesh Jaimini deposed that during the post-mortem, he found that some feather were missing and some feathers were broken. However, as per record, these feathers were not seized.

28. Further, as per testimony of PW-1 SI Ramesh Chand, he on 16.01.2011, he seized gulel and kancha vide seizure memo Ex. PW-1/A. On 05.03.2014, when the above said case property was produced for identification in the testimony of PW-4, it was not in sealed condition.

29. It is relevant to mention at this stage that it is necessary for the prosecution to prove its case beyond reasonable doubt as held by the Hon'ble Supreme Court in **Rang Bahadur Singh Vs. State of U.P. 2000 II AD(S.C.) 103;**

"That the time tested rule is that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction can not be passed on the accused. A criminal Court can not afford to deprive liberty of the appellants, life long liberty, without having at least a reasonable level of certainty that the appellants were the real culprits."

30. In view of the aforesaid discussions and the material contradictions in the testimonies of prosecution witnesses, this court is of the considered view that the prosecution has failed to prove its case

against the accused beyond reasonable doubts and benefit of doubt is ought to be given to the accused. Accordingly, accused is acquitted of charges levelled against him. Accused has also furnished fresh bail bond in terms of section 437A for a period of six months. Case property, if any, be confiscated to the state and file be consigned to record room.

(Deepak Wason)
Addl. Chief Metropolitan Magistrate (Spl. Acts)
Tis Hazari Courts: Delhi

Announced in the open court
Today i.e on 30th April, 2016

CC No. 102/1
Wildlife Vs. Bholu

30.04.2016

Present. Ld. substitute APP for the State alongwith Sh. R.R.

Meena, WLI for the complainant.

Sh. Vikas Bhardwaj, Ld. counsel for accused with
accused on bail.

Today, the matter is fixed for orders.

Vide separate judgment dictated to the steno in the open
Court, accused is acquitted for the offence punishable under Section
51 of Wildlife (Protection) Act, 1972.

Accused is directed to furnish bail bonds in the sum of Rs.
15,000/-in terms of Section 437 A of Cr.P.C.

Bail bond furnished and accepted.

**File be consigned to Record Room, after due
compliance.**

(Deepak Wason)
ACMM (Spl. Acts):Central District:
THC: Delhi: 30.04.2016