

Spl. WL(P) Case No. 01/18

**IN THE COURT OF JUDGE SPECIAL
COURT::::BAKSA::::MUSHALPUR**

Present: Mr. A. Rahman, L L.M, AJS.

Spl. WL(P) CASE NO. 01/18

u/s 51 of WL(P) Act

Parties--

State

vs.

Buddhi Narzary

---- Accused

Charge framed on : 21.08.2015.

Evidence recorded on : 06.02.2017, 05.05.2017,
07.07.2017, 05.02.2019,
28.03.2019 & 18.11.2021.

Argument heard on : 05.01.2022.

Judgment declared on : 12.01.2022.

Appearance:

For the State : Mr. R. Chetry, Learned Special
Prosecutor.

For the defence : Mr. T. Sarma, Learned
Advocate.

JUDGMENT

1. The instant case arose out of Mushalpur P.S Case No. 10/15 registered u/s 51 of WL(P) Act.

2. The prosecution case disclosed in the FIR dated 25.01.2015 lodged by WSI (A[B) Rinkumoni Kalita [4th APBN Battalion, Kahilipara, Guwahati on deputation at Baksa] while doing Naka checking duty at Belguri Chowk, Mushalpur found Shri Raju Ramchiary s/o- Tilen Ramchiary vill-Diringapur carrying one lizard (gecko, kako) at about 11.45 am on the said date.

3. On the basis of the FIR, aforesaid Mushalpur P.S case was registered. During the investigation, ASI Mahendra Prasad Roy also recovered three Nos. of gecko lizard from the house of Buddhi Narzary at village- No.6 Dihira. The geckos were seized in presence of witnesses. The accused persons were arrested and forwarded to the court for judicial custody. During the course of investigation, ASI Mahendra Prasad Roy got identified the seized lizards by Forest official, Batabari Forest Range to be geckos (endangered species) listed in Part II of Schedule 1 under WL(P) Act.

4. On completion of investigation, police submitted charge-sheet against the said two accused persons u/s 51(1) of WL(P) Act.

5. It is relevant to mention here that Ld. CJM, Nalbari in terms of Section 207 Cr.PC committed the case to the court of Hon'ble Sessions Judge, Nalbari. Accordingly, Nalbari Spl. WL(P) Case No. 06/15 was registered.

6. Thereafter, the Hon'ble Sessions Judge, Nalbari having considered the materials on record and submission of Ld. Counsel of both sides framed charge against both the accused persons u/s 51(1) of WL(P) Act.

7. The accused persons denied the charge and claimed to be tried.

8. It would be relevant to mention here that after creation of Baksa District Judiciary, the case was transferred to this court on 28.02.2018 for disposal. Accordingly, upon receipt of the case record, the case was renumbered as Baksa Spl. WL(P) Case No. 01/18.

9. During the course of trial, accused Raju

Narzary @ Mushahary died and the case stood abated against him.

10. During the trial, prosecution examined altogether eight witnesses including the Investigating Police Officer. Besides prosecution also relied on the FIR, seizure list and certificates issued by forest officials.

11. On closure of the prosecution evidence, both the accused Buddhi Narzary was examined u/s 313 Cr.PC. He denied the prosecution allegation and declined to adduce defence evidence.

12. I have heard Mr. R. Chetry Ld. Special Prosecutor as well as Mr. T. Sarma, Ld. Counsel for the defence.

13. Now the point falling for determination is as follows:

POINT FOR DETERMINATION:

Whether accused Buddhi Narzary was found possessing three Nos. of gecko which is included in Part II of Schedule 1 of the WL(P) Act at his house at village No.6 Dihira in violation of the provisions of

the Act and thereby committed offence punishable u/s 51 of WL(P) Act?

DISCUSSION, DECISION AND REASON

THEREOF:

14. Now let us scrutinize the evidence adduced by the prosecution side during the course of trial.

15. PW-1 Rinkumoni Kalita is the informant of the case. She has stated that on 25.01.2015 at about 11.45 am while she was at Naka duty at Belguri Chowk under Mushalpur P.S, she found Raju Mushahary carrying a lizard (gecko) inside a bag. So, she lodged Exbt.1 ejehar and Exbt.1(1) is her signature. She has further testified that on being informed by her, the Officer-in-charge of Mushalpur P.S sent ASI Mahendra Roy. On his arrival, they took the accused and the lizard (gecko) to the police station. She has confirmed that Exbt.2 is the seizure list and Exbt.2(1) is her signature.

16. Her cross-examination on behalf of accused Buddhi Narzary was declined.

17. PW-2 Shri Anil Kalita was declared hostile by the prosecution. He has testified that about one

year back on a certain evening while he returned to Mushalpur, he heard one shop owner was found with a gecko snake at Belguri Chowk.

18. Defence side cross examined him by giving him suggestion that in his previous statement before police he stated that on 25.01.2015 while he was at Belguri Chowk, CRPF personnel and police on Naka checking duty, a boy was found carrying a gecko snake (keko saap in vernacular) inside a bamboo chungu. He denied the suggestion. Cross examination by the defence was declined.

19. PW-3 Nicolas Tirki (village headman) was also declared hostile by the prosecution. His positive evidence is that in the year 2015 on a certain day, on being called by police, he accompanied by the family members of accused Buddhi Narzary came to Mushalpur P.S where police obtained his signature on a paper. He has confirmed that Exbt.3 is the seizure list and Exbt.3(1) is his signature.

20. Prosecution during cross-examination gave him suggestion that in his previous statement before police, he stated that police seized three gecko snakes from the house of Buddhi Narzary and on being inquired, he replied that he collected the

snake from somewhere.

21. During cross-examination by the defence, PW-3 has made it clear that he did not know why police obtain his signature in Exbt.3.

22. The evidence of PW-4 Shri Soren Boro is of no help for the prosecution because he stated that he knows nothing about the occurrence.

23. PW-5 Arjun Kalita deposed that he does not know the accused persons. About three years back on a certain day at about 12/1 noon he had gone to a cycle repairing shop and heard police recovered a gecko (keko) from two youths. On being asked by police, he put his signatures in Exbt.2 and Exbt.3.

24. During cross-examination he has replied that police obtained his signature at cycle shop.

25. PW-6 Alok Pathak is a Forest Range Officer of Salbari Forest Range Office. According to him on 26.01.2015 while he was posted as Range Officer, Batabari Range, he received three Nos. of gecko lizards weighing 150/200 gm, length 6-7 inch from ASI Mahendra Prasad Roy (PW-8) of Mushalpur Police Station. He has confirmed that he issued

Exbt.4 certificate and Exbt.4(1) is his signature. He has also confirmed that Exbt. 5 is the letter received from ASI Mahendra Prasad Roy.

26. PW-7 Lohit Boro deposed that about seven years back, he heard accused persons were arrested by police in connection with possessing gecko/keko lizard. He has confirmed that Exbt.3 is the seizure list and Exbt.3(2) is his signature.

27. In cross-examination, he has replied that police did not show him any gecko before obtaining his signature in Exbt.3.

28. PW-8 ASI Mahendra Prasad Roy has testified that on 25.01.2015, he was posted as Sheristadar (ASI of Police) at Mushalpur Police Station. On that day, PW-1 accompanied by half section of CRPF was at Naka duty at Belguri Chowk, Mushalpur, she informed the Officer-in-charge that a bag suspected to contain gecko (keko saap) was found in the possession of one boy who was identified as Raju Mushahary. Accordingly, he was apprehended. As per direction of the Officer-in-charge of the police station, he immediately proceeded to the place of occurrence and found accused Raju Mushahary with one gecko saap weighing 200 gm which he seized

in presence of witnesses vide Exbt.2 seizure list.

29. On the basis of Exbt.1 FIR lodged by PW-1, the case was registered and he was formally entrusted to investigate the case. On the basis of the statement of accused Raju Mushahary, he visited the house of accused Buddhi Narzary and on thorough search found three Nos. of geckos in a cage and he seized the same by preparing seizure list in presence of witnesses. He arrested both the accused persons and forwarded them to Nalbari court for judicial custody on 26.01.2015. He has also deposed that he had produced the seizure list and geckos to the court. He also ascertained through Forest Range Officer Alok Pathak (PW-6) that the snakes were gecko. He has confirmed that Exbt.2, Exbt.3 are the seizure lists. Exbt.6 is the sketch map and Exbt.7 is the charge-sheet which was submitted by S.I Purna Kumar Nath. As per direction of the court, he handed over the seized geckos to the forest officials for release in the forest. He has confirmed that PW-3 Nicolas Tirki in his previous statement stated that police recovered three Nos. of geckos from the house of accused Buddhi Narzary.

30. During cross-examination, he has made it clear

that no separate ejehar (FIR) was lodged against accused Buddhi Narzary. He also made it clear that at the time of his visit at the house of Buddhi Narzary, no forest official accompanied him.

31. As per statement of PW-8, he found three Nos. of geckos at the house of accused Buddhi Narzary and seized the same vide Exbt.3 seizure list. PW-3 Nicolas Tirkey and PW-7 Lohit Boro are mentioned as seizure witnesses of Exbt.3 seizure list. It is already found that PW-3 turned hostile.

32. The prosecution has confronted through PW-8 that in previous statement PW-3 stated that police recovered three gecko snakes from the house of accused Buddhi Narzary.

33. On scrutiny of the evidence of PW-3, he has clearly stated that when he came to the police station on being called, police obtained his signature on a paper and he affirmed his signature to be Exbt.3(1). Thus, PW-3 does not support that PW-8 seized the gecko (keko saap) from the house of accused Buddhi Narzary.

34. Likewise PW-7 also confirmed his signature to be Exbt.3(2). But, he has stated that police

obtained his signature without showing any gecko (keko saap) to him. Thus, I find that PW-7 also does not corroborate the evidence of PW-8 that he seized the three geckos from the house of accused Buddhi Narzary.

35. Considering the evidence of PW-8 and Exbt.3 seizure list, it appears that he seized three geckos. But, there is no corroborating and convincing evidence to support the version of PW-8 that three geckos were seized from inside the house of accused Buddhi Narzary.

36. On scrutiny of the case record and the evidence, it appears that PW-8 prepared Exbt.6 sketch map which indicates Belguri Chowk where accused Raju Mushahary (who expired during the trial) was found possessing a gecko. If during the course of investigation, PW-8 found geckos inside the house of accused Buddhi Narzary at village-No.6 Dihira, he ought to have drawn sketch map indicating the house of accused Buddhi Narzary and surrounding area. This is a serious lacuna in the investigation and as such an infirmity. Without any corroborating evidence, the evidence of PW-8 that he seized three nos. of geckos from the house of accused Buddhi Narzary, it is difficult to prove that

accused was found in possession of geckos.

37. Coupled with this and the infirmity and lacuna in the investigation as observed above, it is found that the prosecution has failed to prove beyond reasonable doubt that the accused was found possessing three Nos. of geckos. The aforesaid point stands answered in the negative.

38. The accused is entitled to the benefit of doubt. Accordingly, the accused is acquitted on benefit of doubt from the charge u/s 51 of WL(P) Act .

39. The bail bond and surety shall remain in force for another six months in the spirit of Section 437-A Cr.PC.

40. Since, the seized geckos were already released in the forest through forest official during investigation, so formal order in this regard is redundant.

41. Judgment declared and delivered in the open court under my hand and seal on this **12th** day of **January, 2022.**

Dictated and Corrected by me:

Mr. A. Rahman,
Judge Spl. Court
Baksa, Mushalpur

Judge Spl. Court
Baksa, Mushalpur

ANNEXURE:

List of prosecution witness:

- PW1 ... Rinku Mani Kalita
- PW2 ... Anil Kalita
- PW3 ... Nikolas Tirkey
- PW4 ... Soren Boro
- PW5 ... Arjun Kalita
- PW6 ... Alok Pathak
- PW7 ... Lohit Boro
- PW8 ... ASI Mahendra Prasad Roy

List of defence witness:

Nil

List of documents exhibited:

- Exbt.1 : Ejehar.
- Exbt.2 : 1st Seizure list.
- Exbt.3 : 2nd Seizure list.
- Exbt.4 : Certificate by Forest Official.
- Exbt.5 : Receipt letter of ASI Mahendra Prasad Roy.
- Exbt.6 : Sketch map.
- Exbt.7 : Charge-sheet.

List of materials exhibited:

Nil.

Judge Spl. Court,
Baksa, Mushalpur