

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE
AT NORTH LAKHIMPUR**

G.R CASE NO: 1731 OF 2016
PROSECUTOR: STATE OF ASSAM Vs
ACCUSED: SRI PARAG SAIKIA

DISTRICT: NORTH LAKHIMPUR
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT NORTH LAKHIMPUR

GR CASE NO: 1731 / 2016

U/S 447/427/34 OF I.P.C, R/W SECTION 24/25 OF ASSAM FOREST
REGULATION ACT 1891

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI PARAG SAIKIA

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE PROSECUTION: LD. A.P.P SRI R. DUTTA
ADVOCATE FOR THE ACCUSED: MR. A. BARUAH

CHARGE FRAMED ON : 03/08/2018
EVIDENCE RECORDED ON : 20/12/18, 18/09/19, 18/12/19,
08/03/2021
ARGUMENT HEARD ON : 30/03/2021
JUDGMENT DELIVERED ON : 30/03/2021

JUDGMENT

PROSECUTION'S CASE IN BRIEF:

1. Prosecution's case in brief as it reveals from the FIR is that on 04.07.2016 at about 5.30 PM informant Sri Arun Dutta, the then Divisional Forest Officer, along with his staff went to perform patrolling duty inside Ranga Reserve forest under Kachajuli division and saw that accused Sri Parag saikia along with two others are cutting valuable trees from the forest for firewood.

The informant thereafter lodged an FIR about the occurrence before the O/C of Laluk police station.

2. On receipt of the F.I.R, a case was registered being numbered as Laluk P.S Case No. 242/2016. After investigation, I.O of the case submitted charge sheet against accused Sri Parag Saikia and two other child in conflict with law u/s 447/427/34 of IPC, r/w section 24/25/40/41 of Assam Forest Regulation Act 1891. Copies of relevant documents were then furnished to accused Sri Parag Saikia u/s 207 CrPC. Considering the relevant documents and after hearing both the parties, charge was framed against the accused for the offence punishable u/s 447/427/34 of IPC, r/w section 24/25 of Assam Forest Regulation Act 1891. The charges were then read over and explained to the accused to which he pleaded not guilty and stood to face the trial.

3. The prosecution in support of its case examined four witnesses, whereas the defence did not examined any witness. The accused was examined u/s 313 of CrPC. Defence case is of total denial as it reveals from the statements made by accused person and the tenor of cross-examination of prosecution witnesses by defence. I have heard the learned counsel for both the parties.

4. Upon hearing and on perusal of record I have framed the following points for determination-

5. **POINTS FOR DETERMINATION:**

(i) Whether the accused on 04.07.2016 at Ranga forest reserve under Kachajuli division near Gabharu river within Laluk police station, in furtherance of common intention with the two other child in conflict with law, committed criminal trespass by entering into the Ranga reserve forest area for illegally cutting valuable trees, and thereby committed an offence punishable u/s 447/34 of IPC?

(ii) Whether the accused on 04.07.2016 at Ranga forest reserve under Kachajuli division near Gabharu river within Laluk police station, in furtherance of common intention with the two other child in conflict with law, committed mischief by cutting valuable trees of the Ranga reserve forest amounting to Rs.

50/- or upwards, and thereby committed an offence punishable u/s 427/34 of IPC?

(iii) Whether the accused on 04.07.2016 at Ranga forest reserve under Kachajuli division near Gabharu River within Laluk police station, in furtherance of common intention with the two other child in conflict with law, trespassed into the forest land and thereby committed an offence punishable u/s 24 of Assam Forest Regulation Act 1891?

(iv) Whether the accused on 04.07.2016 at Ranga forest reserve under Kachajuli division near Gabharu River within Laluk police station, in furtherance of common intention with the two other child in conflict with law, cut trees of the reserve forest and thereby committed an offence punishable u/s 25 of Assam Forest Regulation Act 1891?

DISCUSSION OF EVIDENCE, DECISION AND REASONS THEREOF:

POINT NO. 1, 2, 3 & 4:

6. For the sake of convenience and as because point no. 1, 2 and 3 are inter-connected, hence they are taken up herein together for discussion & decision as follows:

7. As regards the aforesaid points for determination, PW-2 Sri Haren Hazarika in his evidence-in-chief has stated that at the time of occurrence he was serving as Forest Guard in Denka Central Nursery. On the day of occurrence, the accused had cut branches of trees in the Denka forest reserve area. Prior to the day of occurrence also, the accused used to cut branches of trees in the Denka forest reserve area. The informant on many occasions debarred the accused from cutting trees.

8. In the above context, PW-3 Sri Ajit Rajkhowa in his evidence-in-chief has stated that at the time of occurrence he was serving as Forest Guard in Forest beat office, Ranga reserve. On the day of occurrence, he along with the informant and forest guard Sri Haren Hazarika (PW2) and others went to perform patrolling duty inside the reserve forest area and saw that the accused is cutting branches of a tree. The accused after seeing them jumped from that

tree and fled away. They searched for the accused but could not trace him out. Prior to that day also, the accused used to cut braches of trees from the forest reserve and sell those branches as firewood.

9. At this juncture, it may be mentioned that one of the vital witnesses of this case, namely, Sri Arun Dutta, the then Forest Beat Officer and the informant of this case, appeared before this court on 18/07/2019 but he could not be examined as he could barely talk and he do not remember anything as he had been suffering from paralysis.

10. Now, upon perusal of the evidence deposed by PW-2 and PW-3 in their respective evidence-in-chief, it is seen that the crux of allegations made by them is that the accused at the time of occurrence entered inside Ranga reserve forest area and cut branches of a tree without any authority. In my opinion, the foregoing allegation, if presumed to be reliable, will attract the ingredients of the offences punishable u/s 447/427 of IPC, r/w section 24/25 of Assam Forest Regulation Act 1891. Therefore, it is necessary to find out that whether the aforesaid allegations made by PW-2 and PW-3 can be believed or not.

11. In order to find out the reliability of the versions stated by PW-2 and PW-3, at the very outset, it is seen that the PW-1 in his evidence has specifically stated that he was not present in the place of occurrence and he do not know that whether the accused was actually found cutting tree as alleged. This shows that the allegations made by PW-2 in his evidence-in-chief are hearsay and the same cannot be believed unless corroborated by some other reliable evidence.

12. To proceed with further, it is seen that the PW-3 in his cross-examination has specifically stated that the branches of tree cut by the accused were not seized. In this respect, PW-4 Sri Tapan Lahan, who investigated this case, has also confirmed that nothing had been seized from the place of occurrence in connection with this case. In my opinion, had the accused actually cut the branches of tree as alleged then the forest officials or the I/O would have been able to seize those branches of tree. In the absence of any such seizure, and also in the absence of any justification for not seizing those

branches, I am of the opinion that the mere statement made by PW-3 is not sufficient to prove beyond reasonable doubt that the accused actually cut the branches of tree as alleged. However, I do not find anything substantial either in the cross-examination of PW-3 or otherwise in the evidence on record which can create any reasonable doubt regarding the credibility of the allegation that the accused was found inside Range reserve forest area without any authority.

13. Considering the entire discussion made above, I find that the witnesses examined by prosecution have been able to prove beyond reasonable doubts that the accused entered inside the Ranga reserve forest area at the time of occurrence without any authority. Be it mentioned here that there is nothing in the evidence on record which can show that the accused entered for any reasonable or justifiable cause. Hence, in the absence of any such explanation, it can be presumed that such entry of the accused will definitely cause disturbance or annoyance to the forest officials. Hence, I find that the unauthorised entry of accused inside the Ranga reserve forest range at the time of occurrence is a trespass punishable u/s 24 of the Assam Forest Regulation Act 1891.

DECISION: Point no.3 is therefore decided in the affirmative and goes in favour of the prosecution. Point no.1, 2 & 4 are decided in the negative and goes against the prosecution.

ORDER

14. In view of the discussion made and decision reached in the foregoing point for determination, it is held that the witnesses examined by prosecution have failed to prove beyond reasonable doubts that accused Sri Parag Saikia has committed an offence punishable under section 447/427/34 of IPC, r/w section 25 of Assam Forest Regulation Act 1891, and as such, the accused is acquitted from the charges u/s 447/427/34 of IPC, r/w section 25 of Assam Forest Regulation Act 1891.

15. However, it is held that the witnesses examined by prosecution have been able to prove beyond reasonable doubts that accused person Sri Parag Saikia has committed an offences punishable under section 24 of Assam Forest Regulation Act 1891 (as amended in 1995). As such, accused Sri Parag

Saikia is held guilty for commission of offence punishable u/s 24 of the Assam Forest Regulation 1891 (as amended in 1995) and accordingly he is convicted for the commission of aforesaid offence.

16. Considering the fact that the offence committed has the potential to pose a threat to the wild life, I am not inclined to release the convict person under the provision of Probation of Offenders Act as the same will portray a very lenient approach of the court and thereby encourage other potential offenders to commit similar offence in future.

17. I have heard convict Sri Parag Saikia on the point of sentence. Considering the submission made by the convict person, and having regard to the nature of the offence proved, convict Sri Parag Saikia is sentenced to pay a fine of Rupees 5000/- (Five thousands) under section 24 of the Assam Forest Regulation Act 1891 (as amended in 1995), and in default of payment of fine, to suffer simple imprisonment for one month. The fine amount, as and when paid or realized, shall be deposited in the proper head of account in the treasury office.

The bail bond of the accused shall remain in force for another six months from today.

This judgment is given under my hand and the seal of this court on this the 30th day of March, 2021.

This case is disposed of on contest.

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur

APPENDIX**PROSECUTION EXHIBITS:**

Exhibit.1 – Sketch Map

Exhibit.2 – Charge Sheet

PROSECUTION WITNESSES:

1. PW-1 – Sri Dhonai Teron
2. PW-2 – Sri Haren Hazarika
3. PW-3 – Sri Ajit Rajkhowa
4. PW-4 – Sri Tapan Lahan

DEFENCE EXHIBITS:

NIL

DEFENCE WITNESSES:

NIL

(F. U Choudhury)
Additional Chief Judicial Magistrate,
Lakhimpur, North Lakhimpur