
(1979) 03 GAU CK 0001
In the Gauhati High Court

Tilok Bahadur Rai

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 22-03-1979

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 11, 2, 51, 9

Citation : (1979) CriLJ 1404

Hon'ble Judges : K.N. Saikia, J

Bench : Single Bench

Judgement

K.N. Saikia, J.—This is a Criminal Revision application under Regulation No. 28 of the Assam Frontier (Administration of Justice) Regulation, 1945, against the judgment dated 24-6-1976 passed by the Deputy Commissioner, Tirap District, Khonsa in case No. G.R. 10 of 1976 convicting the accused u/s 51(1) of Wild Life Protection Act, 1972, (hereinafter referred to as "the Act") and sentencing him to simple imprisonment for 6 months.

2. The facts of the case are, that in the evening of 8th of May, 1975 a tiger was shot dead by Sepoy Tilok Bahadur Rai at about 5.30 p.m. at Changlai Camp while on sentry duty. The accused, prior to shooting, informed the Guard Commander about the presence of the tiger and the Commander instructed that 2/3 rounds might be fired into the air to scare it away, but while this was being done the tiger, instead of fleeing, charged at the accused who fired two shots at it, one hitting the left shoulder blade and the other in the chest, and so hit, the tiger jumped and fell dead few yards away.

3. The Divisional Forest Officer, Wild Life Division, by his Memo. No. WI 66/74/ 35 dated 21-2-1976 complained to the Deputy Commissioner, Tirap District, Khonsa enclosing a copy of the report obtained from the Divisional Forest Officer, Changlang Division, who forwarded a report from the Captain Adjutant for Commandant of Changlai post of 7 Assam Rifles, to the following effect:

On 8th May, 1975 at about 17.30 hours a tiger appeared in front of the quarter

guard at Changlai Post 7 Assam Rifles, On seeing the tiger, No. 71280 Rifleman Tilok Bahadur Rai, sentry on duty at quarter guard shouted "Bhagh Ayo Bhagh Ayo". Hearing his voice quarter guard duty Commander No. 72880 Lance Naik Dinanath Pagiya came near to sentry on duty and seeing the tiger coming towards sentry he ordered the sentry to fire 2-3 rounds in the air to frighten the tiger. Accordingly, the sentry on duty fired 3 rounds in the air. The tiger instead of going away immediately turned and ran towards No. 71280 Rifleman Tilok Bahadur Rai and attempted to assault him. In order to save his life sentry on duty fired two rounds and killed the tiger on the spot.

4. The Deputy Commissioner, Tirap District, Khonsa suo motu prosecuted the accused u/s 9(1) of the Act, and at the trial after examination of the witnesses he observed:

Considering the above mentioned facts and different discrepancies that have come into this and various cover ups that have been attempted, I have no doubt in my mind that the tiger had been shot intentionally by Sepoy Tilok Bahadur Rai. Unfortunately because of the lackadaisical approach of the prosecution the connection between the officers of 7 AR and the men on sentry duty could not be established. Sepoy Tilok Bahadur Rai is sentenced to 6 (six) months simple imprisonment u/s 51(1) of the Wild Life Protection Act.

Hence, this application.

5. The question that naturally offers for determination is; whether the accused killed the tiger in hunting and whether there were mitigating circumstances in his defence ?

Hunting is defined in Section 2, Sub-section (1C) of the Act as follows:

2 (16). "hunting" with its grammatical variations and cognate expressions includes,

(a) capturing, killing, poisoning, snaring, and trapping of any wild animal and every attempt to do so;

(b) driving any wild animal for any of the purposes specified in Sub-clause (a);

(c) injuring or destroying or taking any part of the body of any such animal or, in the case of wild birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;

6. From this definition it appears that hunting need not necessarily be within the wild life sanctuary. In the instant case it is clear from the record that the tiger happened to be killed at the Changlai Out Post Camp which fell outside the natural habitat of wild life. Section 51(1) of the Act reads as follows:

Any person who contravenes any provision of this Act or any rule or order made thereunder or who commits a breach of any of the conditions of any licence or permit granted under this Act, shall be guilty of an offence against this Act, and

shall, on conviction, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both:

Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule II or meat of any such animal or animal article, trophy or uncured trophy derived from such animal or where the offence relates to hunting in a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than 6 months but may extend to 6 years and also with fine which shall not be less than five hundred rupees.

Provided further that in the case of a second or subsequent offence of the nature mentioned in the foregoing proviso the term of imprisonment shall not be less than one year and the amount of the fine shall not be less than one thousand rupees.

7. In the instant case it is in record that the accused did not go out of his post while the tiger approached him. On the three shots being fired in the air, the animal, instead of fleeing away, charged at the accused, seeing which the accused fired two shots to kill, which killed the tiger.

8. To decide whether in shooting to kill the accused acted in self-defence or not, the nature and ferocity of the animal will be relevant. A tiger is, what the Romans called, a "ferae naturae" by nature of dangerous ferocity, as distinguished from a "mansuatae naturae", e.g., a dog or a horse, which have in individual cases given indication of a vicious or dangerous disposition. In the case of attack by a "ferae naturae" the victim cannot be expected to weigh the chances in golden scale and consequently, the inference that he was acting in defence of his own life will be more easily drawn than in case of an attack by a "mansuatae naturae", while no such inference may be drawn at all in cases of harmless wild life like birds.

9. On the basis of facts and circumstances of the case there can be no doubt that the accused acted in defence of his life and his act did commensurate with defence.

Section 11 of the Act provides:

Notwithstanding anything contained in any other law for the time being in force the killing or wounding in good faith of any wild animal in defence of oneself or of any other person shall not be an offence, provided that nothing in this Sub-section shall exonerate any person who, when such defence becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made thereunder.

10. It is clearly a case of killing the tiger in good faith in defence of oneself and it cannot be said that the accused was committing any offence prior to shooting the tiger that charged at him. Therefore, he will be completely protected under Sub-

section (2) of Section 11. The Deputy Commissioner while convicting the accused u/s 51(1) followed the spirit of the Act to protect the wild life but the provisions of Section 11 were not brought to his notice. I find that the impugned order of conviction and sentence is contrary to the provisions of Section 11 of the Act and as such it is liable to be set aside, and I hereby do. The application is allowed. The Rule is made absolute.