

G.R CASE NO: 624 OF 2008  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SHRI SADDAM ALI

DISTRICT: KAMRUP  
IN THE COURT OF THE SUB DIVISIONAL JUDICIAL  
MAGISTRATE, (S),II, KAMRUP

GR CASE NO: 624/ 2008  
U/S 51 WL(P) ACT

PROSECUTOR: STATE OF ASSAM  
VERSUS  
ACCUSED: SHRI SADDAM ALI

PRESENT : YUSUF AZAZ, SUB DIVISIONAL JUDICIAL  
MAGISTRATE, (S),II, KAMRUP

ADVOCATE FOR THE PROSECUTION: SHRI M. ALI

ADVOCATE FOR THE ACCUSED: SMTI P BARUAH

OFFENCE EXPLAINED ON:19/1/2011

EVIDENCE RECORDED ON: 17/3/2011, 8/6/2012

ARGUMENT HEARD ON: 21/7/2012

JUDGMENT DELIVERED ON:1/8/2012

### **JUDGMENT**

1. The accused, Shri Saddam Ali was found in possession of two wild birds locally known as “HUDU” (a rare variety of owl), which was seized by the Forest Officials and the accused alongwith the birds were handed over to the police, who arrested the accused and seized the said birds.

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2. The informant, Shri Ashok Kumar Das is the Officer in Charge of Amchang Wildlife Sanctuary and he lodged the ejahar in this case on 18/2/2008 to the effect that he got information from a secret source that the accused has procured two "HUDU" birds to sell them at the local market. Upon receipt of the information he alongwith his staff and the police officials of Noonmati Police Station visited the house of the accused and found two Hudu birds in captive; as such they rescued the said birds and arrested the accused.
3. The police upon receipt of the ejahar started investigation in the case and after completion of the investigation submitted chargesheet against the accused under section 51 of the Wildlife (Protection) Act,1972.
4. The accused was called upon to enter trial and after causing his appearance and furnishing him with the copies of the relevant documents, the formal charge under section 51 of the Wildlife (Protection) Act,1972 and the same was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.
5. The prosecution examined as many as two witnesses in support of its case; whereas the defence declined to adduce evidence.
6. The defence version is that the said Hudu birds came on its own to the house of the accused and the accused tried to chase them away, but they remained and later on the forest and the police officials came and seized them and arrested the accused. The accused has submitted that he did not capture the said "hudu" birds for selling or otherwise. The accused has claimed innocence.
7. I have heard the learned counsels for both the parties. Shri M.Ali, the learned APP has submitted that the prosecution has established its case beyond reasonable doubt; as such the accused needs to be convicted and sentenced.
8. Smti P. Baruah, the learned counsel for the accused has contended that the accused is innocent, because the birds came on their own to the house of the accused. She further submitted that the accused did not capture the said birds; hence prayed for acquittal of the accused.

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

(1) Whether the accused had on 18/2/2008 hunted the “Hudu” (a rare variety of owl), which is a wild animal specified in the schedule of Wildlife (Protection) Act,1972 and thereby contravened the provision of section 9 of the said Act; hence committed the offence under section 51 of the Wildlife (Protection) Act,1972?

**DISCUSSION, DECISION AND REASONS FOR THE DECISION:**

**POINT FOR DETERMINATION NO.1:**

10. The prosecution had in this case alleged that the accused had hunted the two Hudu birds (owl) and intended to sell the same in the market. The prosecution has alleged that the aforesaid “hudu” birds are wild animals as defined under the Wildlife (Protection) Act,1972 (hereinafter referred to as the Act); hence their hunting is prohibited and their possession is illegal; as such the accused has committed the offence under section 51 of the said Act.

11. The prosecution has examined two witnesses in support of its case. Shri Ashok Kumar Das (PW1) is the informant as well as the star witness for the prosecution, because it is he who had allegedly unearthed the aforesaid offence.

12. The PW1, Shri Ashok Kumar Das has deposed that he is the Range Officer and In Charge of Amchang Wildlife Sanctuary. He has deposed that on 18/2/2008 he received information from some secret source that the accused, Shri Saddam Ali had captured two “Hudu” birds from Dispur and kept it at his home for selling at the local market. The PW1 has stated that he alongwith his staff and other police officials visited the house of the accused and searched his house. He stated that he searched the house of the accused and found the said two “Hudu” birds in a bamboo cage. The PW1 has stated that he thereafter brought the said birds and the accused and lodged this ejahar. The PW1 had seized the said two birds from the

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possession of the accused and prepared a seizure list which is marked as exhibit 3. The PW1 has identified his signature upon the said seizure list and the same is marked as exhibit 3(1). The PW1 has also identified the ejahar lodged by him and the same is marked as exhibit 1.

13. The PW1 was cross examined but nothing material could be elicited from his cross examination so as to doubt or disbelieve the said witness. The PW1 had stated in his cross examination that he received the information at about 1:00 to 1:30 PM and went to the house of the accused at about 2:00 to 2:30 PM. The PW1 has further stated that he found the said two birds in the cage on the floor in a concealed state.
14. The PW2, Shri D. Hazarika is the investigating officer in this case and he has stated that the informant, Shri Ashok Kumar Das (written wrongly as Achyut) came to the police station with two Hudu birds and the accused. He stated that he seized the birds and gave the same to the zimma of the informant and arrested the accused.
15. The PW2 was cross examined but nothing material could be elicited from his cross examination which would lead me to doubt or disbelieve his evidence.
16. The perusal of the evidence of the PW1 and the PW2 clearly reveals that the said two Hudu birds were recovered from the house of the accused, kept inside a cage in a concealed state and that the accused was apprehended from his house and produced before the police.
17. Now let me discuss the defence set up by the accused in his statement recorded under section 313 CrPC and also during the cross examination of the prosecution witnesses. The defence did not adduce evidence in support of its case. The accused has admitted in his statement recorded under section 313 CrPC that the PW1 came to his house alongwith the forest officials and also admitted that the two birds were recovered from his house, but his only defence is that according to him the said two birds came on their own at the courtyard of the accused in the morning. He (accused) has further stated in his defence that he tried to chase the said two birds away, but they did not go, instead they took shelter inside the firewood kept in the house of the accused. The accused has stated he had to go out as

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such he told the small children of his house to chase the said two birds away later on, but when he returned to his house at about 3:00Pm he found that the said two birds were still in his house and at that moment the forest officials came and apprehended him.

18.The defence tried to be set up by the accused is not believable, because it cannot be believed that two wild birds, whose natural habitat is in the wild and which birds do not occasionally come in touch with human beings, would come to the house of the accused on their own and even after being chased would not fly away, but remain in the house for long seven hours. There is no material to show that the said birds were injured which might have made them flightless or otherwise, and might have forced them to take shelter in the house of the accused. A wild bird instinctively would fly away on the approach of human beings; hence it cannot be believed that the said two birds, on their own came to the house of the accused, and remained there amidst humans for long seven hours without any restraint. Further there were two birds; as such it cannot be believed that both of them remained at the house of the accused without any restraint. It cannot be believed that both the birds did not fly away at the sight of humans and inspite of being chased away. Further the accused has admitted that the PW1 came and seized the said two birds, but did not state as to how did the PW1 catch those two birds so easily if the said two birds were free, because naturally they would have flown away when the PW1 or other persons would have approached them to catch them.

19.The fact that the said two birds were caught by the PW1 without any effort strengthens the version of the prosecution that the said two birds were kept in captive inside a bamboo cage. The fact that the said two birds were kept in captive state inside the cage also explains the fact as to why the said two birds could not fly away.

20.In view of the above materials on record, it is held that the defence projected by the accused is not at all believable.

21.It is held that the accused was in possession of the above two birds and he kept the said birds in captive in a cage; hence the accused is said to have “hunted” the said two birds as defined in section 2(16)

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of the said Act. The section 2(16) of the said Act defines “hunting”, amongst others, to include capture of an wild animal.

22. In the instant case at hand the fact that the accused was found in possession of the said two birds and the fact that he kept the said two birds in a cage and concealed it goes on to show that he had captured the said two birds; as such he has hunted the said two birds within the meaning of section 2(16) of the said Act.
23. The section 9 of the said Act prohibits hunting of a wild animal enumerated in the schedule I to schedule IV of the said Act. The “owls” are one of the wild animals listed in the schedule IV of the Wildlife (Protection) Act, 1972 and an entry to this effect is found in entry no: 11(48) of the schedule IV. In view of the above it is held that the accused has violated section 9 of the Wildlife (Protection) Act, 1972.
24. The section 51(1) of the said Act provides the penalty for the violation of any of the provision of the said Act and it prescribes that the person violating any of the provision of the said Act shall on conviction, be punishable with imprisonment which may extend to three years or with fine which may extend to Rs.25,000/- or with both.
25. In view of the above discussion it is held that the accused person has violated the section 9 of the said Act and hence he has committed the offence under section 51 of the Wildlife (Protection) Act, 1972.
26. DECISION: The accused has contravened the provision of section of the Wildlife (Protection) Act, 1972 and as such he has committed the offence under section 51 of the Wildlife (Protection) Act, 1972; hence the point for determination is answered in favour of the prosecution.
27. In view of the discussions made above and the discussion reached in the foregoing point for determination it is held that the accused has committed the offence under section 51 of the Wildlife (Protection) Act, 1972 and accordingly the accused is convicted of the offence under section 51 of the Wildlife (Protection) Act, 1972 read with section 9 of the Wildlife (Protection) Act, 1972.

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28. The section 51(5) of the Wildlife (Protection) Act, 1972 debars the applicability of the Probation of Offenders Act, 1958 for certain kinds of offences under the said Act, but an offence of this nature is not within the prescribed limitation, because the prosecution has failed to prove that the said two wild animals (Hudu birds) were hunted from Sanctuary or National Park. In view of the above the Probation of Offenders Act, 1958 would be applicable to the offence proved against the accused.

29. Upon perusal of the record and the nature of offence I am not inclined to extend the benefit of the Probation of Offenders Act, 1958, because the Hudud birds are very rare species of owl and are very less in numbers. The Hudud birds are very rare and they fetch a very high cost in the market when sold and this fact has come to my knowledge from the newspaper report of recent times. The incidence of Hudud Birds hunting has increased in the recent past due to the high price that they fetch in the black market. I take judicial notice of this fact from the newspaper reports which appeared in the recent past, notable amongst them are the reports dated 5/11/2010 in "**The Hindu**" which is a respectable leading national daily. The said newspaper report goes on to say that the owls are hunted down to extinction in India due to superstition and black magic as it is believed that the owls possess great black magic powers. The relevant portion of the said report reads as-

*"Owls are in serious danger in India due to rampant illegal trade in living specimens and their body parts that are falsely considered to have medicinal and occult healing properties, according to a recent wildlife report. The report published by TRAFFIC INDIA - the wildlife trade monitoring network of the WWF and International Union for Conservation of Nature (IUCN) - has revealed that black magic and sorcery driven by superstition, totems and taboos is slowly driving various owl species towards extinction."*

The reports of illegal trade in owl is also reported in the Assam Tribune, a leading daily of North East in its report dated 28/7/2008 whereby it was alleged that the "Hudu" (or the **Red Indian Horned Owl**) is being sold to the NASA, USA for research works in the black market for as high as Rs.25,00,000/-. The said report further

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alleges about an incident where one Sangeeta Goswami, an animal activist tried to rescue two Hoodoo Birds but sustained injuries as a result and when informed to the police, the police refused to help promptly. The relevant portion of the said report is quoted below-  
***“GUWAHATI, July 27 – Alleging that the Red Indian Horned Owl, popularly known as hoodoo bird, is being sold to NASA for facilitating research works, People for Animals, a non-government organisation working against cruelty against animals, has decided to move Chief Minister Tarun Gogoi urging the latter to initiate measures for protection of the endangered species.***

***Sangeeta Goswami, president of People for Animals, Assam chapter, alleged that the endangered birds are being sold for Rs 25 lakh each in the international market, which, of late, has caught the attention of animal activists worldwide.***

***“Recently, an animal activist from Australia wrote to me expressing displeasure over the spurt in such activities, especially concerning the NASA, where intensive research works are being carried out. As these birds are being smuggled from Assam and its neighbouring areas, the matter was brought to our notice,” Goswami said during a press conference.***

***“Such things were there and we did intimate State Forest Minister Rockybul Hussain about the sinister developments but to no avail. But, as the illegal trading of endangered birds, especially via the Myanmar route, has increased manifold in the recent past, we have decided to move the Chief Minister and if required even the Union Ministry of Environment and Forest would be moved,” Goswami said, adding that a survey done last year divulged that the present population of hoodoos is limited to just over 300.***

***Earlier, Goswami rued that owing to lack of prompt action on the part of the city police, a group of animal activists including herself failed to rescue two hoodoo birds from the city.***

***“I had specific information about two such birds being brought to the city but when I intimated the police about it, they refused to act promptly. We tried our best to rescue them but ended up injuring***

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*ourselves. Finally, an FIR (919/08 U/s 354/352 IPC) was lodged with the Dispur Police Station but it was too late by then,” Goswami said.*

One more report of trade in Hudu bird was found in the report of the Assam Tribune dated 24/3/2008 wherein another NGO rescued a Hudu Bird of about 3 Kgs. The relevant portion of the said report is reproduced below- *“RANGIYA, March 23 – Displaying their sense of social responsibility, members of the newly formed Mahkuma Bikas Samiti, an NGO formed by the surrendered ULFA activists, rescued a 3 kg, rare and precious bird, locally known as ‘hudu’ (a large variety of owl family) from the hands of a section of fraudulent traders/businessman near here from Balisatra on March 16 last.*

*According to reports, the NGO worker Brajen Kalita first spotted that something was carried in a cage by a few persons through the Pasortop area of Balisatra, and later gathered courage to stop the fraudulent group to rescue the rare bird species after having some confrontation with the former.*

*Anticipating danger, the group left the bird and fled away from the site. Kalita then, along with others, handed over the bird to Rangiya police on March 16.*

*Police said the approximate market value of the bird is around Rs 2-3 lakh. The bird will be handed over to Forest Department for its safe transit, the source added.”*

30. The above newspaper reports makes it abundantly clear that an illegal trade in the Hudu birds are going on for their high value; as such if such trade is not stopped sooner, then it would not be long when we would merely hear about Hudu birds in stories and documentaries, but would not be able to witness their beauty.

31. Considering the highly commercial nature of the trade and the fact that the Hudu birds are captured and sold for greed I am of the opinion that the benefits of the Probation of Offenders Act, 1958 shall not be extended to the accused person, so as to send a message

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to the other persons engaged in such type of trade that their illegal activities would not be tolerated by the courts or the society, and sooner they leave this trade, the better for them.

32.I have heard the accused on the point of sentence. The accused has submitted that he is a poor vegetable vendor and have small children and is the only bread earner of the family; hence he may be awarded reduced sentence.

33.Upon hearing the accused and upon consideration of the nature and the gravity of the offence I am of the opinion that the ends of justice would be met if the accused is sentenced to simple imprisonment for one year and further directed to pay fine of Rs.10,000/- (ten thousand) and in default to undergo simple imprisonment for another three months.

#### ORDER

34.In view of the discussions made above and the decision reached in the foregoing points for determination, the accused is convicted under section 51 of the Wildlife (Protection) Act,1972 and he is sentenced to undergo simple imprisonment for one years and further he is directed to pay fine of Rs.10,000/- (ten thousand) and in default to further undergo simple imprisonment for another three months.

35.Furnish a free copy of the judgment to the accused.

36.The case is disposed of on contest without cost.

Given under my hand and the seal of this court on this the 3<sup>rd</sup> day of August, 2012 at Guwahati.

Yusuf Azaz,  
Sub Divisional Judicial Magistrate,(S)II,  
Kamrup.

#### APPENDIX

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YUSUF AZAZ, SUB- DIVISIONAL JUDICIAL MAGISTRATE, (S), II, KAMRUP.

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**PROSECUTION EXHIBITS:**

- 1) EXHIBIT 1: EJA HAR
- 2) EXHIBIT 2: SEIZURE LIST
- 3) EXHIBIT 3- SEIZURE LIST
- 4) EXHIBIT 4: CHARGESHEET

**DEFENCE EXHIBITS**

NONE

**PROSECUTION WITNESSES**

- 1) SHRI ASHOK KUMAR DAS
- 2) SHRI D. HAZARIKA

**DEFENCE WITNESSES**

NONE

Yusuf Azaz,  
Sub Divisional Judicial Magistrate,(S)II,  
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YUSUF AZAZ, SUB- DIVISIONAL JUDICIAL MAGISTRATE, (S), II, KAMRUP.