

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 27<sup>TH</sup> DAY OF MAY, 2022

BEFORE

THE HON'BLE MR.JUSTICE MOHAMMAD NAWAZ

**CRIMINAL APPEAL No.716 OF 2011**

BETWEEN:

1. SRINIVASA

2. BASAVARAJU,

... APPELLANTS

[BY SRI. Y.D. HARSHA,ADVOCATE]

AND:

STATE BY  
BEECHANALLI POLICE STATION,  
REPRESENTED BY SPP.,  
HIGH COURT BUILDING,  
BANGALORE.

... RESPONDENT

[BY SRI. R.D. RENUKARADHYA, HCGP]

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THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C., PRAYING TO SET ASIDE THE JUDGMENT AND SENTENCE, PASSED BY THE LEARNED PRESIDING OFFICER, I ADDITIONAL DISTRICT AND SESSIONS JUDGE AT MYSORE IN SPL.C. NO.26/2009 DATED 22.06.2011 AND ALLOW THE CRIMINAL APPEAL.

THIS CRIMINAL APPEAL COMING ON FOR FURTHER HEARING THROUGH VIDEO CONFERENCE/PHYSICAL HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

**JUDGMENT**

This appeal is preferred against the Judgment and Order dated 22.06.2011 passed by the Court of 1 Additional District and Sessions Judge, Mysuru, in Special Case No.26/2009, wherein the accused/appellants are convicted and sentenced for offences punishable under Sections 138(1)(a) of the Electricity Act, 2003, Section 429 of IPC and Section 9 r/w Section 51 of the Wild Life Protection Act.

2. Heard the learned counsel for appellants and the learned High Court Government Pleader for State and perused the material on record.

3. Brief facts of the prosecution case are that, on 31.10.2008 at around 10.00 a.m., P.W.2 who was working as a watcher in the Forest Department was informed by some boys about the death of an elephant in the land belonging to P.W.4-D.Sundar Das. Immediately he went to the spot and found a dead elephant and also noticed that

there was a solar fence put up around the land and there was a pump house and from the said pump house, electric connection had been taken unauthorizedly to the solar fence. He passed the information to P.W.1 who was working as Range Forest Officer in Antharasanthe Wild Life Range. P.W.1 on getting the information, went to the spot and after confirming that the elephant had died coming into contact with the electric fence put up around the land, lodged a complaint as per Ex.P1.

4. P.W.9 is the Investigation Officer who took up the investigation and after completion of the investigation filed charge-sheet against the accused/appellants.

5. In order to bring home the guilt of the accused, the prosecution got examined P.Ws.1 to 11 and got marked documents Exs.P1 to 11 and M.Os.1 to 3.

6. Amongst the prosecution witnesses, P.Ws.3, 5, 10 and 11 have been treated hostile and they have not supported the case of prosecution.

7. P.W.1 is the first informant who was working as Range Forest Officer. He lodged the complaint as per

Ex.P1. He has stated that on 31.10.2008 at 10.30 a.m., he was informed by C.W.2 [P.W.2] about the death of an elephant in Sy. No.17 and immediately he went and examined the spot and found that there was a solar fencing put up around the said land and the elephant was seen lying dead inside the land. He has also deposed that about 100 meters away, there was a pump-set from which unauthorisedly electric connection was taken to the fencing around the land. The said evidence of P.W.1 has been corroborated by the evidence of P.W.2. Further, from the spot, M.Os.1 to 3 viz., insulated wire, binding wire and bamboo sticks were seized.

8. Though P.W.3 has been treated hostile, he has stated in the chief-examination that the accused were cultivating the land. The evidence of P.W.4 viz., the owner of the land also clearly reveal that the land was taken on lease by the accused persons. The prosecution has got marked Exs.P4 and 5 viz., Lease Agreement copies entered into between P.W.4 and the accused. P.W.4 has also

stated in his evidence that the accused had erected solar fence around the land in question.

9. P.W.6 is the doctor, who conducted the post-mortem as per Ex.P7. According to the report, the elephant died on account of electrocution.

10. P.W.7 is the Junior Engineer, who has given a report as per Ex.P8 stating that there was electricity supply on the date of the incident.

11. Though it is contended by the learned counsel for the appellants that the accused are not the owners of the land in question and there is no evidence to show that they were either cultivating the land or that they have erected electric fencing in the land in question, nothing worthwhile is elicited from the prosecution witnesses to disbelieve their evidence. In view of the evidence of the above prosecution witnesses, the prosecution has been able to establish that the land in question i.e., Sy. No.17, situated at K.R.Pura village belonging to P.W.4 was taken on lease by the accused persons and they were cultivating

the said land. The material on record also discloses that an electric fence was put up around the land and the elephant came in contact with the said fence and died due to electrocution, which is substantiated by Ex.P7 issued by P.W.6.

12. The trial court has convicted the accused for offences punishable under Section 138(1)(a) of the Electricity Act 2003, Section 429 of IPC and Section 51 of the Wild Life Protection Act.

13. The learned counsel for the appellants has contended that the trial Court was not proper in convicting the appellant under the provisions of the Wild Life Protection Act, as there is no complaint filed by an authorized officer and therefore, cognizance for the offence under the said Act could not have been taken. He has placed reliance on an unreported Judgment of this Court passed in Criminal Appeal No.715/2011 disposed of on 15.03.2022, and contended that in similar circumstances, this Court has held that Section 9 r/w Section 51 of the

Wild Life Protection Act is not attracted. Relevant para No.17 of the said Judgment is extracted hereunder:

"17. Another aspect is that, under Section 55 of the Wild Life (Protection) Act, 1972, no Court shall take cognizance of any offence under the said Act, except on the complaint of any person other than the officers mentioned therein. Admittedly in the instant case, cognizance is taken on the basis of chargesheet filed by the police and not on a complaint, which is defined under Section 2(1)(d) of Cr.P.C. Even on the said ground the conviction of the appellant under the provisions of the Wild Life (Protection ) Act cannot be sustained."

14. Even in the instant case, complaint was lodged by P.W.1 i.e., Range Forest Officer before the Police and on completion of the investigation, charge-sheet was filed and on the basis of the charge-sheet, the learned Magistrate took cognizance and therefore the cognizance was not on a complaint, which is defined under Section 2(d) of Cr.P.C. Hence, the conviction of the accused for the offence punishable under Section 9 r/w Section 51 of the Wild Life Protection Act is not sustainable in law.

15. The Judgment and Order of conviction and sentence passed by the trial Court for rest of the offence does not call for any interference. Hence, the following:

ORDER

Appeal is partly allowed.

The conviction and sentence of the appellants passed in Spl. Case No.26/2009, dated 22.05.2011 by the Court of the I Additional District and Sessions Judge at Mysuru for offence punishable under Section 9 r/w Section 51 of the Wild Life Protection Act is hereby set aside.

The conviction and sentence passed for offence punishable under Section 138(1)(a) of the Electricity Act 2003 is hereby confirmed.

The conviction of the appellants/accused for the offence under Section 429 of IPC is confirmed and the sentence is modified as under.

Each of the accused/appellants shall pay a fine of ₹10,000/- [Rupees Ten Thousand] and in default of



payment of fine, shall undergo rigorous imprisonment for a period of 6 [six] months for the offence punishable under Section 429 of IPC.

**Sd/-  
JUDGE**

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