

Sansar Chand vs State Of Rajasthan on 20 October, 2010

Equivalent citations: 2011 AIR SCW 372, 2010 (10) SCC 604, AIR 2011 SC (CRIMINAL) 99, 2011 (3) AIR JHAR R 538, AIR 2011 SC (SUPP) 793, (2010) 4 DLT(CRL) 170, (2010) 11 SCALE 82, (2010) 4 CURCRIR 173, (2010) 4 RECCRIR 825, (2011) 72 ALLCRIC 694, 2011 (1) SCC (CRI) 79, (2011) 1 KCCR 36, (2011) 84 ALL LR 247, (2011) 1 ALLCRILR 485, 2011 CALCRILR 1 45, (2011) 2 KCCR 65, 2011 ALLMR(CRI) 341, (2011) 97 ALLINDCAS 230 (SC), 2011 CRI LJ (SUPP) 433 (SC)

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Bench: T. S. Thakur, Markandey Katju

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _2024____OF 2010
[Arising out of Special Leave Petition (Crl.) No.5599 of 2009]

Sansar Chand	..	Appellant
-versus-		
State of Rajasthan	..	Respondent

JUDGMENT

Markandey Katju, J.

1. Leave granted.

2. Shera was the symbol of the recent Commonwealth Games, but ironically Shera has been almost exterminated in our country. The Sher Khan of Rudyard Kipling's `Jungle Book', which once abounded in India, is rarely to be seen today.

3. This case reveals how avaricious and rapacious persons have by organized crime destroyed large

parts of the wild life of India and brought many animals e.g. tigers, leopards, bison, etc. almost to the brink of extinction, thereby seriously jeopardizing and destroying the ecological chain and ecological balance in our environment.

4. The appellant herein has been convicted under the Wildlife (Protection) Act, 1972 by all the three courts below and now he is in appeal before us.

5. Before dealing with the facts of this case, we would like to comment upon the background. India, at one time, had one of the richest and most varied fauna in the world. However, over the last several decades there has been rapid decline of India's wild animals and birds which is a cause of grave concern. Some wild animals and birds have already become extinct e.g. the cheetah and others are on the brink of extinction. Areas which were once teeming with wild life have become devoid of it, and many sanctuaries and parks are empty or almost empty of animals & birds. Thus, the Sariska Tiger Reserve in Rajasthan and the Panna Tiger Reserve in Madhya Pradesh today have no tigers.

6. One of the main causes for this depredation of the wild life is organized poaching which yields enormous profits by exports to China and other countries.

7. Article 48A of the Constitution states as follows :

"48A. Protection and improvement of environment and safeguarding of forest and wild life. - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country".

8. Article 51A (g) of the Constitution states that it is the duty of every citizen of India to protect and improve the natural environment including the wild life.

9. The Wildlife (Protection) Act, 1972 was enacted for this constitutional purpose. Chapter III of the said Act prohibits hunting of wild animals except in certain limited circumstances. Chapter IV enables the State Government to declare any area as a sanctuary or national park, and destruction or removal of animals from those areas is prohibited except under very limited circumstances. Chapter V & VA prohibits trade or commerce of wild animals, animal articles or trophies. Chapter VI makes violation of the provisions of the Act a criminal offence. By the Wildlife Protection (Amendment) Act, 2002 the punishment has been increased vide Section 51 as amended, and the property derived from illegal hunting and trade is liable to forfeiture vide Chapter VIA.

10. Before dealing with the facts of this case, we may consider why preservation of wild life is important for human society.

11. Preservation of wild life is important for maintaining the ecological balance in the environment and sustaining the ecological chain. It must be understood that there is inter-linking in nature. To give an example, snakes eat frogs, frogs eat insects and insects eat other insects and vegetation. If we kill all the snakes, the result will be that number of frogs will increase and this will result in the frogs eating more of the insects and when more insects are eaten, then the insects which are the prey of

other insects will increase in number to a disproportionate extent, or the vegetation will increase to a disproportionate extent. This will upset the delicate ecological balance in nature. If we kill the frogs the insects will increase and this will require more insecticides. Use of much insecticide may create health problems. To give another example, destruction of dholes (wild dogs) in Bhutan was intended to protect livestock, but this led to greater number of wild boar and to resultant crop devastation causing several cases of abandonment by humans of agricultural fields. Destruction of carnivorous animals will result in increase of herbivorous animals, and this can result in serious loss of agricultural crops and other vegetation.

12. It must be realized that our scientific understanding of nature, and in particular of the ecological chain and the linkages therein is still very primitive, incomplete and fragmentary. Hence, it is all the more important today that we preserve the ecological balance because disturbing it may cause serious repercussions of which we may have no idea today.

13. As already stated above, the wild life in India has already been considerably destroyed. At one time there were hundreds of thousands of tigers, leopards and other wild animals, but today there are only about 1400 tigers left, according to the Wildlife Institute.

14. Until recently habitat loss was thought to be the largest threat to the future of tigers, leopards etc. However, it has now been established that illegal trade and commerce in skins and other body parts of tigers, leopards etc. has done even much greater decimation. Poaching of tigers for traditional Chinese medicine industry has been going on in India for several decades. Tigers and leopards are poached for their skins, bones and other constituent parts as these fetch high prices in countries such as China, where they are valued as symbols of power (aphrodisiacs) and ingredients of dubious traditional medicines. This illegal trade is organized and widespread and is in the hands of ruthless sophisticated operators, some of whom have top level patronage. The actual poachers are paid only a pittance, while huge profits are made by the leaders of the organized gangs who have international connection in foreign countries. Poaching of wild life is an organized international illegal activity which generates massive amount of money for the criminals.

15. Interpol says that trade in illegal wild life products is worth about US\$ 20 billion a year, and India is now a major source market for this trade. Most of the demand for wildlife products comes from outside the country. While at one time there were hundreds of thousands of tigers in India, today according to the survey made by the Wildlife Institute of India (an autonomous body under the Ministry of Environment and Forests), there were only 1411 tigers left in India in 2008. There are no reliable estimates of leopards as no proper census has been carried out, but the rough estimates show that the leopard too is a critically endangered species.

16. There is virtually no market for the skins or bones of tigers and leopards within India. The evidence available points out that tigers and leopards, poached in the Indian wilderness, are then smuggled across the border to meet the demand for their products in neighbouring countries such as China. When dealing with tiger and leopard poachers and traders, it is therefore important to bear in mind that one is dealing with trans-national organized crime. The accused in these cases represents a link in a larger criminal network that stretches across borders. This network starts with

a poacher who in most cases is a poor tribal and a skilled hunter. Poachers kill tigers and leopards so as to supply the orders placed by a trader in a larger city centre such as Delhi. These traders are very wealthy and influential men. Once the goods reach the trader, he then arranges for them to be smuggled across the border to his counterpart in another country and so on till it reaches the end consumer. It is impossible for such a network to sustain itself without large profits and intelligent management.

17. Under the Wildlife (Protection) Act, 1972, trading in tiger, leopard and other animal skins and parts is a serious offence. Apart from that, India is a signatory to both the UN Convention on International Trade in Endangered Species (CITES) and the UN Convention against Transnational Organized Crime (CTOC). However, despite these National and International laws many species of wildlife e.g. tigers, leopards, bison etc. are under threat of extinction, mainly due to the poaching organized by international criminal traders and destruction of the habitats.

18. Sansar Chand, the appellant before us has a long history of such criminal activities, starting with a 1974 arrest for 680 skins including tigers, leopards and others. In the subsequent years the appellant and his gang has established a complex, interlinking smuggling network to satisfy the demand for tiger and leopard parts and skins outside India's borders, particularly to China. It is alleged that the appellant and his gang are accused in 57 wildlife cases between 1974 and 2005.

19. Sansar Chand the appellant herein has a long history of involvement with wildlife crime. A brief account of the same is given below:

(i) In a seizure dated 11.09.1974 having criminal case No. 20/3 Sansar was held guilty by the Court of Shri H.P. Sharma ACMM, Delhi on 1.8.1981 and sentenced on 3.8.1981 to rigorous imprisonment for one year and six months. This Court vide it's judgment dated 13.5.1994 ordered the release of Sansar Chand on the ground that he was a juvenile on the date of the offence and his sentence be considered to have undergone.

(ii) In another seizure dated 20.11.1974 he was held guilty and sentenced to pay a fine of Rs. 20,000/-.

(iii) The third conviction of Sansar Chand was by the Special Railways Court vide it's order dated 20.4.2004 which was pleased to award Sansar Chand rigorous imprisonment for 5 years. The said judgment has been subsequently affirmed by the Sessions Court on 19.10.2006 and the High Court of Rajasthan vide it's order dated 10.12.2008 against which Sansar Chand has preferred this special leave petition.

(iv) In addition to the above there are other cases pending against the appellant which provide details of his pending cases in various Courts and which were admitted by him in his statement under Section 313 Cr.P.C. and which are Ex. P-

46 and P-47. These exhibits show the extent of involvement of Sansar Chand in wildlife crime.

(v) In order to highlight the extent of the organized nature of wildlife crimes being committed by the appellant, it is important to mention here that it is not just Sansar Chand, but other members of his family and associations who are also involved in the illegal trade in wildlife. It is alleged that the appellant's younger brother Narayan Chand is mentioned in FIR No. 82/2005, Kamla Market Police Station, New Delhi, involving the seizure of, inter alia, 2 tiger skins, 38 leopard skins and 1 snow leopard skin and has been named as an accused in the complaint filed under Section 55 of the Wild Life (Protection) Act, 1972 in this case. Narayan Chand is also an accused in Court Case No. 1145/2009 being tried before the Additional Chief Judicial Magistrate, Haldwani, arising from Preliminary Offence Report No. 13/Fatehpur/2008-2009, involving the seizure of 1 tiger skin and a tiger skeleton. Sansar Chand's wife Rani and son Akash are accused in the case arising from FIR No. 362/2004, Manak Chowk Police Station, Jaipur, involving the seizure of leopard paws and claws. CBI in the year 2005 invoked MCOCA against Sansar Chand and his family members and associates which case is pending trial in a Delhi Court.

20. The present case is only one of the cases in which the appellant has been accused. The facts of the case have been set out in detail in the judgment of the High Court and hence we are not repeating the same here. Briefly stated, on January 5, 2003 the police arrested one Balwan who was traveling in a train with a carton containing leopard's skin. During investigation the said Balwan on January 7, 2003 made a disclosure statement to the SHO, GRP Bhilwara that the two leopard skins were to be handed over to Sansar Chand at Sadar Bazar, Delhi. The appellant was charge sheeted and after trial he was convicted by the Additional Chief Judicial Magistrate (Railways), Ajmer, Rajasthan by his judgment dated 29.4.2004. The appellant filed an appeal which was dismissed by the Special Judge, SC/ST (Prevention of Atrocities) Cases, Ajmer vide his judgment dated 19.8.2006. Thereafter the appellant filed a Revision Petition, which was dismissed by the Rajasthan High Court by the impugned judgment dated 10.12.2008. Hence, this appeal.

21. Thus, all the courts below have found the appellant guilty of the offences charged.

22. Learned counsel for the appellant submitted that the prosecution case is solely based on the extra judicial confession made by co-accused Balwan vide Ex.P-33. We do not agree. Apart from the extra judicial confession of Balwan there is a lot of other corroborative material on record which establishes the appellant's guilt.

23. It must be mentioned that persons like the appellant are the head of a gang of criminals who do illegal trade in wildlife. They themselves do not do poaching, but they hire persons to do the actual work of poaching. Thus a person like the appellant herein remains behind the scene, and for this reasons it is not always possible to get direct evidence against him.

24. In the courts below the prosecution filed a list of pending cases against Sansar Chand, in some of which he has been found guilty and punished. The appellant has been prosecuted by the Wildlife Department in various courts as mentioned in the letter of the Deputy Inspector General of Police, CBI, New Delhi to the Inspector General of Police, Jaipur dated October 20, 2004.

25. Ex.P-33 which contains the confession of the appellant, was written by PW-11 Arvind Kumar on the instructions given by the accused Balwan while in custody. Prior to Ex.P-33, Balwan has also disclosed the name of the appellant vide Ex.P-6 on January 6, 2003.

26. In our opinion, Ex.P-33 supported by the evidence of Arvind PW 11 and Ex.P-6 cannot be treated to be concocted documents which cannot be relied upon. As per the disclosure statement of Balwan the other co-accused persons were also arrested and articles used for killing and removing skins from the bodies of leopards were also recovered.

27. The accused Balwan was released on bail on 18.01.2003, and thereafter he sent the written confession Exh.P-33 on 23.01.2003 during judicial custody at Central Jail, Ajmer. In our opinion it cannot be held that the accused Balwan was under any pressure of the police. The said letter Ex.P-33 dictated by Balwan to Arvind Kumar was directly sent from the Central Jail, Ajmer to the Chief Judicial Magistrate's Court, Ajmer. We are of the opinion that the letter P-33 was not fabricated or procured by pressure. The accused Balwan has clearly stated in Exh.P-33 that he was paid Rs.5000/- and Rs.10000/- by the appellant. The appellant has several houses in Delhi, purchased in his name and in the name of his wife. It appears that these houses were purchased with the help of gains made out of his illegal activities stated above.

28. Pw-11 Arvind Kumar has stated in his deposition before the Court that he wrote the letter Ex.P-33 at the instance of the accused Balwan. The thumb impression of the accused Balwan is on that letter.

29. At the instance of the appellant one Bhua Gameti was questioned who stated that the panther's skin had been taken by various persons e.g. Khima, Nawa, Kheta Ram, Mohan and Chuna, who were also arrested. At their pointing out the equipment used for hunting the leopard and poaching it were seized. Panther's nails were also recovered from accused Bhura and the guns, cartridges, and knives for removing the skins of panthers were recovered from the accused.

30. There is a large amount of oral and documentary evidence on record which has been discussed in great detail by the learned Magistrate and the learned Special Judge and hence we are not repeating the same here. Thus the appellant has rightly been held guilty beyond reasonable doubt.

31. As already stated above, in such cases it is not easy to get direct evidence, particularly against the leader of the gang (like the appellant herein).

32. The appellant, Sansar Chand has been doing this illegal trade for more than 30 years. He is habitual of doing this illegal business of trade in skins and parts of panthers and tigers. He has, as far back as in 1974, committed his first crime when he was barely 16 years of age and the conviction was upheld by the Supreme Court in Criminal Case No. 15 of 2001. A large number of cases are pending against him in Delhi, Uttar Pradesh and Rajasthan. Taking all these materials into account there is no doubt that the appellant is guilty of the offence charged.

33. There is no absolute rule that an extra judicial confession can never be the basis of a conviction, although ordinarily an extra judicial confession should be corroborated by some other material vide *Thimma vs. The State of Mysore* - AIR 1971 SC 1871, *Mulk Raj vs. The State of U.P.* - AIR 1959 SC 902, *Sivakumar vs. State by Inspector of Police* - AIR 2006 SC 563 (para 41 &

42), *Shiva Karam Payaswami Tewar vs. State of Maharashtra*

- AIR 2009 SC 1692, *Mohd. Azad vs. State of West Bengal* - AIR 2009 SC 1307. In the present case, the extra judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act.

34. The learned Magistrate and the Special Judge have discussed in great detail the prosecution evidence, oral as well as documentary and have found the appellant guilty. The High Court has affirmed that verdict and we see no reason to take a different view. The appeal, therefore, stands dismissed.

35. Before we part with this case, we would like to request the Central and State Governments and their agencies to make all efforts to preserve the wild life of the country and take stringent actions against those who are violating the provisions of the Wildlife (Protection) Act, as this is necessary for maintaining the ecological balance in our country.

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.....J. (MARKANDEY KATJU)J. (T. S. THAKUR) NEW DELHI;

th 20 OCTOBER, 2010