

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM A- No. 740-MA of 2015

Date of decision : July 09, 2015

State of Haryana

.....Appellant

Versus

Deepak and another

....Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Vishal Garg, Addl. AG, Haryana.

LISA GILL, J.

State of Haryana has preferred this appeal impugning judgment dated 03.11.2014 passed by the learned Additional Sessions Judge, Ambala whereby respondents Deepak son of Madan and Shahnawaz son of Sayyed Hasan have been acquitted of the charges of the offences under Sections 307, 420, 473, 427 IPC, Section 8 of The Punjab Prohibition of Cow Slaughter Act, 1955 and Section 11 of the Prevention of Cruelty to Animals Act, 1960 against them.

Brief facts as set forth by the prosecution are that on 01.06.2012. ASI Jeet Singh alongwith Parmod Kumar and Constable Kuldeep Singh were present in village Patherheri while patrolling.

Secret information was received by ASI Jeet Singh that the owner of

a truck make LP with KRC written on both sides, registration No. HR-38-D-4790 was being used to send cows and oxen from Punjab to UP via Haryana for slaughtering by the owner of the said truck. Said truck was informed to be coming from Shahzadpur via village Sadikpur and Sadhora for proceeding to Uttar Pradesh. It could be apprehended on taking requisite measures. Information was conveyed to Incharge PCR No. 9 for reaching Sadikpur turn at Shahzadpur.

Raiding party was, accordingly, prepared and barricades were set up. A truck was seen approaching at about 5.00 a.m. at a very high speed. It turned from Shahzadpur to Sadhora side. ASI Jeet Singh signalled it to stop with the help of torch light. However, driver of the truck instead of stopping steered his truck towards the police party and tried to run over them with intention to kill them. ASI Jeet Singh and Head Constable Parmod Kumar jumped back and narrowly escaped. Driver of the truck hit against the government vehicle Tata Sumo No. HR-37-C-0444 which was parked on the left side of the road. He tried to flee by breaking through the barricades but the angle of the barricades got entangled in the front left tyre of the truck which burst. Truck stopped about 100 meters away. 2-3 persons alighted from the truck and managed to flee towards the fields.

On checking, 17 injured oxen in a pitiable condition were found loaded in the truck. Oxen were taken in possession along with truck. Two number plates bearing numbers PB-12B-4039 and UP-11-R7087 were recovered from the cabin of the truck which were also

taken in possession. On an application to veterinary Dr. Shruti Aggarwal, medical examination of oxen was conducted. Oxen were then handed over to Shri Krishna Gaushala Samiti, Naraingarh vide temporary sapurdari Ex. P22. Formal FIR No. 71 dated 01.06.2012 was registered. Rough site plan of the place of occurrence prepared.

No headway was made in this case till 21.02.2014 when PW11 ASI Rameshwar Nand received information that respondent Deepak and Shahnawas had surrendered before the Magistrate at Naraingarh. Respondents were joined in investigation on 22.02.2014 after obtaining permission from the Court. They were interrogated one at a time. During interrogation, respondent Deepak allegedly suffered disclosure statement Ex. P11 and respondent Shahnawaz suffered disclosure statement Ex. P24 revealing their involvement in the commission of crime. Place of occurrence i.e. where the truck had been left on 01.06.2012 was demarcated in pursuance to the said disclosure statements. Demarcation memo is Ex. P12.

On completion of investigation, report under Section 173 Cr.P.C. was presented. Charge under Sections 307, 420, 473, 427 IPC, Section 8 of The Punjab Prohibition of Cow Slaughter Act, 1955 and Section 11 of the Prevention of Cruelty to Animals Act, 1960 was framed on 03.05.2014. Accused claimed trial.

Prosecution examined 12 witnesses to buttress its case. Respondents denied incriminating material put to them in their statements under Section 313 Cr.P.C. while pleading innocence and false implication.

Learned trial Court on appreciation of evidence on record

concluded that the prosecution had failed to prove its case beyond reasonable doubt against the said respondents thereby acquitting them of the charges against them. Aggrieved therefrom present appeal has been preferred by the State of Haryana.

Learned counsel for the State vehemently argues that the trial Court has grossly erred in acquitting the respondents in the face of the overwhelming evidence which has been produced by the prosecution. He submits that the incident in question is duly proved by the testimony of the official witnesses who had no axe to grind against the respondents. While referring to the testimony of PW1, Dr. Shruti Aggarwal, it is argued that ASI Jeet singh and Head Constable Parmod Kumar were indeed injured on 01.06.2012. Besides that positive evidence pointing to the commission of offence is present in the nature of the oxen recovered from the truck. Mechanical reports of the offending truck and the official Tata Sumo prove the occurrence of the incident in question. In the light of the above, it is prayed that acquittal of the respondents is illegal and liable to be set aside.

We have heard learned counsel for the State and gone through the file.

Learned counsel for the State is unable to deny that the prosecution has tried to link the respondents with the commission of crime solely on the basis of disclosure statements Ex. P11 and Ex. P24 allegedly suffered by Deepak and Shahnawas respectively. No effort whatsoever had earlier been made by the police to investigate into the matter.

Learned trial Court while looking into the evidence has rightly held that:-

“ The prosecution has tried to connect the accused with the commission of crime with the help of disclosure statements as Ex.P11 of accused Deepak and as Ex.P24 of accused Shahnawaz who on the basis of aforesaid disclosure statements have got demarcated the place of alleged occurrence. For operation of Section 27 of Indian Evidence Act, 1872, the various requirements of the Section can be summed up as follows”-

- i. To fact of which evidence is sought to be given must be relevant to the issue.
- ii. The fact must have been discovered.
- iii. The discovery must have been in consequence of some information received from the accused and not by accused's own act.
- iv. The person giving the information must be accepted of any offence.
- v. He must be in custody of a police official.
- vi. The discovery of a fact in consequence of information received from an accused in custody must be deposed to.
- vii. There upon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved; but in the case in hand, the prosecution has failed to convince this court that which facts were discovered in consequence of information received from accused that helped to bring to light and which would have been difficult to find out otherwise, since the place of occurrence was already in the knowledge of the police officials; therefore, in the considered opinion of this court, the disclosure statements of the accused regarding demarcation of the place of alleged

occurrence are of no evidentiary value.

It is pertinent to mention here that, as per the prosecution case, as discovered above, accused had fled away from the spot and it has nowhere come in evidence that, police officials constituting raiding party either knew them earlier or had identified them while fleeing. Moreover, even no test identification parade was got conducted by the Investigating Officer of the case; accordingly, as the accused were not known to the prosecution witnesses, the evidence regarding identification of the accused at the trial for the first time is inherently of weak character as has also been held in **Rajesh Govind Jagesha versus State of Maharashtra 1999 (4) RCR (Criminal) 754 (SC).**”

It is well settled that prosecution has to prove the foundational facts. Edifice of its case cannot rest on disclosure statements suffered in police custody. It is in this context that learned trial Court has observed that no independent witness was joined at the time of recording of the disclosure statements or at the time of alleged demarcation of the spot. It is a matter of record that the place of incident was very well known to the police. Therefore, it cannot be said that the demarcation of the spot in any manner leads to discovery of the fact which would make the disclosure statement admissible in evidence.

Apart from the extreme inertia displayed by the police inasmuch as no effort was made to investigate the matter till the alleged surrender of the accused on 21.02.2014 after 1½ years of the alleged occurrence, there are material discrepancies in the evidence of the relevant witnesses which cast a doubt on the veracity of the

prosecution version. PW11 ASI Rameshwar Nand has stated that driving licence of accused Deepak Ex. P13 and registration certificate of the truck Ex. P14 was produced by the owner of the truck Jabar Singh and taken in possession vide memo Ex. P15 whereas PW7 EASI Yashpal has deposed that respondent Deepak produced his driving licence as Ex. P13 alongwith the registration certificate as Ex. P14 which were taken in possession by the Investigating Officer vide Ex. P15. Furthermore, despite secret information to the effect that it was the owner who was indulging in the trafficking of the livestock no action had been taken by the police against the owner. In such a situation it is not justified to return a finding of guilt of the accused. Trial Court has rightly extended the benefit of doubt to the accused as suspicion howsoever strong can never take the place of proof.

It is a settled position that there have to be strong, compelling and substantial reasons to set aside acquittal of the accused. Simply because another view may be possible cannot be a ground for reversing a judgment of acquittal.

Learned counsel for the State is unable to point out any infirmity, perversity or illegality in the impugned judgment, which warrants interference by this Court.

Consequently, this appeal is dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

July 09, 2015
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