

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.1875 of 2012

Date of decision: 12th January, 2017

Illiyas

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Jagjot Singh, Advocate for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

The revisionist petitioner Illiyas convict held so by the two courts below has come up before this Court in this revision by invoking the powers of this Court in terms of Section 401 Cr.P.C.

Heard Mr. Jagjot Singh, Advocate representing the petitioner and Mr. Munish Sharma, Asstt. Advocate General, Haryana on behalf of the State and perused the records of the case.

An FIR in question under Section 3, 4, 4-A and 5 of the Punjab Prohibition of Cow Slaughter Act, 1955 (in short, 'the Act') was got registered against two accused Ibrahim and the present petitioner Illiyas. The brief allegations levelled by the complainant ASI Shri Ram are that on 26.06.2002 around 7.00 p.m. while a police party was on a routine patrolling duty, upon receipt of a secret information that Vakil,

Jameel, Ibrahim, Illiyas, Wahid and Zakir are carrying on illegal trade of cow slaughtering in the forest area of Teekri Khera where blue scooter and a Maruti car are also parked, leading to registration of the case and further at that point of time the accused Ibrahim and Illiyas were trying to slaughter a live cow and on raid both the accused were apprehended while their accomplices managed to escape. It is the case of the prosecution that 200 kg of meat, cow skin, a live cow, four sacks, two knives, two axes, two ropes, a blue coloured scooter bearing registration No.HR-29F-1841 and a white coloured Maruti car bearing No.HR-28-8884 were recovered from the spot.

Upon completion of the investigation and on submission of challan, prosecution examined PW-1 Dr.R.N. Sharma Veterinary Doctor who proved his report Ex.PW1/A; PW2 EHC Kanwar Lal; PW3 ASI Rohtash; PW4 SI Shriram; PW5 Inspector Preetpal and PW6 ASI Dharamchand.

On closure of the prosecution evidence, accused in their stand denied the allegations but did not examine any witness in defence leading to passing of the judgment of conviction dated 07.09.2011 by the Court of learned Presiding Officer-cum-Judicial Magistrate 1st Class, Special Environment Court, Faridabad whereby accused Ibrahim was acquitted and accused Illiyas was found guilty of offences under Sections 3 and 8 of the Act and was sentenced to undergo rigorous imprisonment for one

year and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo simple imprisonment for ten days.

Upon challenge of these findings, the Court of learned Additional Sessions Judge, Faridabad through judgment dated 13.06.2012 dismissed the appeal and that is how the parties are before this Court.

Appreciating the submissions of the two sides, it is well entrenched position of law, reference of which can be taken note of the law laid down in the case of **‘Ramreddy Rajeshkhanna Reddy & another v. State of Andhra Pradesh’ 2006(2) RCR (Criminal) 462 SC** which postulates that prosecution must establish all the pieces of incriminating circumstances by leading reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused and mere suspicion however grave, cannot be a substitute for proof. In an earlier view laid down in the case of **‘Daya Ram v. State of Haryana’ 1997 (1) RCR (Criminal) 662**, which enunciating criminal jurisprudence had laid down that it is cardinal principle of criminal law that an accused is presumed to be innocent and the prosecution is under legal obligation to prove each and every ingredient of offence beyond any doubt and the accused is not required to discharge his burden by evidence beyond reasonable doubt.

Thus, applying this well established law, reverting back to the instant case, the learned State counsel with all fairness has conceded to the fact that though by virtue of memo Ex.PW2/A the prosecution has claimed that it has recovered 200 kg of cow meat, cow skin, a live cow, 2 sacks of jute and other articles along with two vehicles detailed above, there is no exhibiting and proof of the recovery of these things and the same has nowhere been proved and exhibited at the trial much less the entire allegations revolve around the fact if the meat/skin so recovered belongs to a cow and was also from the conscious possession of the accused.

The recovery is alleged to have been made on 26.06.2002 and on the same day, PW1 who claims himself to be a Veterinary Doctor, has given his report PW1/A but sadly enough to the very query of the Court, learned State counsel was purely at a loss of words as it finds nowhere mentioned that at the relevant time when these articles were examined, they were stained with any blood, thus, improbabilizes that when the accused were apprehended, they were in the process of slaughtering a cow nor any of the instruments claimed to have been recovered for slaughtering of such an animal are proved on the record, much less that they were stained by the blood of said animal. It is nowhere categorically mentioned in the report that the meat was that of a cow, rather a vague term has been used 'of cow species'. There is no chemical analysis of the

meat to prove that the said meat was of a cow as a physical examination is not sufficient enough to decipher if it was actually of a cow or a Neelgai (roz) as both the animals by physical appearance resemble each other and so their physical attributes. Mere holding that tissue and fiber of the meat were soft in nature does not makes it clear that it was that of a cow and rather this witness/Doctor, upon his cross-examination states that he had examined the said articles on 26.06.2002 at about 10/11 a.m., rather upsets in entirety the appplecart on which the prosecution story has sought to take a ride against the accused, when the occurrence apparently as per the contentions of learned State counsel has taken place on the same very day at 7.00 p.m. and the Doctor admits that he did not examine the meat chemically, are matters which undermines the prosecution version and thus, materially contradicts the version given forth by PW2 EHC Kanwar Lal when he further states that at the time of alleged recovery there was fresh blood on the articles and which fact is totally missing in the testimony and report of PW1 who does not even refers to stains of dried-up blood.

The Investigating officer PW4 has nowhere established the recovery of any of these articles by exhibiting them as apparently it has been conceded to at the bar by learned State counsel that the same were never produced before the Court at the time of recording of the evidence

of prosecution, are matters which certainly have a great bearing on the outcome of the prosecution story.

The Punjab Prohibition of Cow Slaughter Act, 1955 as applicable to the State of Haryana, defines by way of Section 3 an act to be an offence, which deals with commission of offence of slaughter or cause to be slaughtered or offer or cause to be offered for slaughter any cow, anywhere in the State of Haryana and by way of proviso to it, a mere killing of a cow in accident or in self-defence would not be considered as slaughter under the Act. Thus, by this, it creates an onerous burden on the prosecution to prove that the accused had been intentionally involved in slaughtering a cow so alleged to have been recovered.

The petitioner has been convicted under Section 3 of the Act and thus learned State counsel could not impress upon this Court by what means there is commission of offence in terms of Section 3 whereas Section 8 deals with the penalty for contravention of provisions of Section 3, 4A, 4B or 5 and thus, unlike the requirements of Section 4(a) or (b) of subsection (1) does not arise and thus, the entire burden remains on the prosecution and cannot shift upon the accused and which Section deals primarily with slaughter of a cow who is suffering from some ailment or disease, which makes it desirable to undertake such a slaughter or for the purposes of experimentation in medical and public

health and which eventuality does not arises in the present case. How the learned trial Court came to a conclusion that the PWs have testified that the petitioner was slaughtering a cow in the forest area at the relevant time when raid was conducted, certainly goes contrary and is misinterpretation of the prosecution evidence and how the learned lower Court came to the conclusion that the mere production of articles so alleged to have been recovered, including the skin, meat and tools at any point of time immediately after the arrest not proved legitimately during the trial certainly undermines the sanctity of the prosecution story. As has been pointed out by learned counsel for the petitioner, none of the material witnesses of the prosecution could satisfactorily establish the case of the prosecution beyond shadow of reasonable doubt and failure of prosecution certainly needs to be accepted.

How the learned first appellate Court has concluded that PW4 had seen the petitioner cutting the beef into pieces could not be supported in the evidence on the records. More so, to the mind of the Court a bare perusal of the impugned findings of learned first appellate Court impels this Court to hold that since judgment in question is bereft of any reasons which has led to the conclusions so drawn by the Court that it is certainly not a judgment in the eyes of law in terms of Section 354 Cr.P.C.

Thus, in the totality of what has been discussed and detailed above, the prosecution version certainly is on a sticky, shaky wicket, not

amenable to acceptance. The manner in which the trial Court and so the first appellate Court has drawn conclusions certainly the findings are not only illegal in approach but perverse in its outlook and needs to be set aside by way of acceptance of the instant revision petition whereby the judgment of conviction of the petitioner is set aside.

Revision petition stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

January 12, 2017

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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