

CRM-A-1779-MA-2018 (O&M) 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-A-1779-MA-2018 (O&M)
Date of Decision : 23.10.2018

State of Haryana

....Appellant(s)

Versus

Rakib and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE AMIT RAWAL

Present : Mr.Kuldeep Tiwari, Addl. AG, Haryana

MAHESH GROVER, J.(ORAL)

This is an application under Section 378(3) Cr.P.C seeking leave to appeal against the judgment dated 17.11.2017 awarding acquittal to the accused persons who were tried in FIR No. 264 dated 28.7.2015 registered under Sections 279, 336, 307, 34 IPC read with Section 4/8-B of the Cow Slaughter Act, Section 11-D of the Animal Cruelty Act and Section 25 of the Arms Act.

According to the prosecution case on 28.7.2015 a telephonic message was received in the Police Station that some members of Gau Raksha Dal had apprehended a truck loaded with cows alongwith a Bolero car in front of Mayur Dhabha and the police party reached there where Vijay Lalaria moved a complaint that he was Honorary Animal Welfare Officer and had received an information that three persons who had boarded a Bolero car were escorting a truck loaded with cows and heading towards

Uttar Pradesh for slaughtering purpose. Then the complainant alongwith his friends Sanjay and Parveen Rathore reached the Dhabha. One of the members of anti cow slaughter wing was already present there. Bolero car was seen coming driven by Sabbir, Ashif and Jamshed but when it was signalled to stop they hit their Indica car and fled away. They also tried to run over with an intention to kill. Thereafter they fled leaving their Bolero car behind. The truck which was following it was also signalled to stop but they also tried to run over the police party and fired shots and ultimately all four persons in the truck also fled leaving the vehicle behind. Among the occupants of truck, two were Sarfaras and Rakib and other were unknown. On checking 16 cows were found loaded and two were dead.

Learned Trial Court noticed that there were material discrepancies in the statement of the witnesses and specially ones who had witnessed the incident namely Sanjay and Parveen Rathore and Vijay Lalaria. They were extremely ambiguous about the version and could not give the time when they received information about the truck and were also ambivalent regarding the complete ocular version. There were discrepancies in the time of arrest. According to the official witness HC Sanjay Kumar, the arrest was made on the spot whereas the investigating officer stated that the arrest was made on the subsequent date. This itself is a crucial variation in the prosecution version sufficient to cast a serious doubt on its veracity. This coupled with the other discrepancies noticed in the statement of the eye witness and fact that some of these alleged persons who were present in the Balero car or the truck were known to the eye witnesses would be sufficient to create a doubt about the identity of the persons as well and this when examined in the backdrop of variation in the time of arrest would be fatal to

the prosecution case. We, therefore, do not find any reason to accept the application to grant the leave to appeal, particularly, when it has been filed after delay of 79 days. That apart there were allegations of firing shot but in trial Section 25 of the Arms Act was not arrayed against the accused.

In view of above, instant application is hereby dismissed.

(Mahesh Grover)
Judge

23.10.2018
rekha

(Amit Rawal)
Judge

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