

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-A-1605-MA of 2017

Date of Decision : February 06, 2018

State of Haryana

.... Applicant

Vs.

Jahid and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE T. P. S. MANN.

HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Praveen Bhadu, AAG, Haryana
for the applicant.

* * *

DEEPAK SIBAL, J. :

Through the instant application filed under Section 378 (3) of the Code of Criminal Procedure, 1973 (for short – Cr.P.C.), the applicant seeks grant of leave to appeal against the judgment dated 14.12.2016 passed by the Additional Sessions Judge, Gurgaon (for short – the trial court), through which the respondents have been acquitted of the charges framed against them under Sections 307/332/353/186/395/397 of the Indian Penal Code, 1860 (for short – IPC), Section 25 of the Arms Act, 1959 and Sections 4-A/8, 2/80 of the Cow Slaughter Act, 1955.

Briefly stated, the case of the prosecution is that on 01.05.2014, telephonic information was received by the police that 7-8

Monika
2018.02.15 10:23
I attest to the accuracy and
integrity of this document

persons, who were travelling in a pick-up vehicle with a cow in the same, were coming towards a police barrier. As per the information, a pick-up vehicle was noticed by the police and signalled to stop. However, the occupants of the vehicle, after dashing their vehicle against the barricade, fled away. The police party along with complainant-Naresh, Sanju and Krishan chased the vehicle. On the pick-up vehicle striking into a divider, all the persons alighted from the vehicle and one of them fired at the police party but no one was hit. Two of the respondents namely Jahid and Abid were apprehended from the spot but the others namely Farid, Taarif, Kaalu Khan, Saleem, Aaleem and Tatli managed to flee. The search of Jahid Khan led to the recovery of a country-made pistol with one live cartridge in it. Two empties were also found at the place of occurrence. The above items including the pick-up vehicle as also the cow were taken into possession by following due process. During the course of investigation, the accused who had managed to flee were also arrested.

Finding a prima-facie case against the accused, they were charge-sheeted for the commission of offences under Sections 395/397/307/332/ 353 IPC and Sections 4-A/8, 2/80 of the Cow Slaughter Act, 1955. Accused Jahid was also individually charged for commission of an offence under Section 25 of the Arms Act, 1959. On the accused pleading not guilty, they were all put to trial.

The trial court, after sifting the evidence which had come on

Monika
2018.02.15 10:23
I attest to the accuracy and
integrity of this document

record, being of the opinion that the prosecution had not proved its case beyond reasonable doubt, acquitted all the accused persons. Such acquittal of the accused is the subject matter of challenge in the present proceedings.

Learned counsel for the applicant submitted that the trial court erred in acquitting the accused-respondents of the charges levelled against them as there was overwhelming evidence on record to prove their guilt and therefore, there was no reason in fact or in law with the trial court to acquit them.

The submissions made by learned counsel for the applicant have been considered but the same do not warrant a favourable consideration.

The evidence which was brought on record by the prosecution does not prove that the accused were in possession of the cow which was alleged to have been recovered from their vehicle. The receipt (Ex.P-F) of handing over a cow to Gaushala Sabha, which was produced by the prosecution, is unworthy of credence as there is cutting on the same with regard to the date of taking the cow in possession. No explanation has been given by the prosecution for such cutting. Even assuming that the cow was in the possession of the accused, there was no evidence led by the prosecution to show that the cow was being transported for the purpose of slaughtering so as to attract the provisions of the Cow Slaughter Act, 1955.

The recovery of a country-made pistol along with cartridges

Monika
2018.02.15 10:23
I attest to the accuracy and
integrity of this document

from accused Jahid is also not found to have been proved. The sanction order (Ex.P-V) dated 22.09.2014 for prosecuting the accused was proved through the testimony of Lady Constable Suman, who was produced by the prosecution as PW-11. She stated that the pistol etc. were not produced before the Joint Commissioner of Police, Gurgaon. However, the Public Prosecutor submitted that as per the sanction order (Ex.P-V), the pistol was produced before the sanctioning Authority by the Investigating Officer.

The trial court, after perusing the sanction order (Ex.P-V), returned a specific finding that it had been duly recorded in the sanction order that the pistol had been produced before the competent Authority. However, when the report of Forensic Science Laboratory, Madhuban (for short – the FSL) (Ex.P-J) was perused, it was revealed that the pistol was deposited with the FSL through letter dated 14.05.2014 and after its examination, the report was issued by the FSL on 07.11.2014. Thus, the trial court opined that if on 22.09.2014, the pistol was lying deposited with the FSL, it could have not been produced before the sanctioning Authority without any orders of its release by the FSL on that day. No such release order was produced by the prosecution. No argument has also been raised by the learned State counsel to persuade us to take a different view. Even otherwise, we find no infirmity in the above finding so recorded by the trial court.

With regard to the allegations regarding firing done by Jahid,

Monika
2018.02.15 10:23
I attest to the accuracy and
integrity of this document

no evidence was produced by the prosecution with regard to recovery of empty cartridges from the place of occurrence. The complainant-Naresh Kumar, who was produced as PW-7 and was allegedly an eye-witness of the occurrence, stated that he did not know the accused prior to the date of occurrence but he later contradicted himself by stating that prior to the occurrence, the accused had come to his village 3-4 times. He further stated that the accused fired at the place from where they were arrested which submission of his was contradicted by other witnesses, who clearly stated that after alighting from the pick-up vehicle, the accused started firing and thereafter ran away. In view of the above contradictions, the alleged place of attack on the police party is doubtful.

PW-7 Naresh Kumar could not tell as to which accused was arrested by which of the police official. He also failed to tell the registration number of police vehicle as also of the pick-up vehicle of the accused. His statement that the front portion of the pick-up vehicle was damaged when it hit the footpath was contradicted by the Investigating Officer, who while appearing as PW-4, stated that the vehicle of the accused was damaged by the public.

PW-8 Krishan stated that one of the accused was arrested on the night of the occurrence and the other was arrested on the next day whereas all along the case of the prosecution was that both the accused Jahid and Abid were arrested on the same day. PW-9 Sanju stated that a

country-made pistol and three empty cartridges were recovered by the police whereas other witnesses contradicted him by stating that only two empty cartridges were recovered. PW-9 Sanju further went on to depose that the accused were chased up to 2-3 kilometers whereas PW-8 Krishan deposed that the accused were chased up to 7-8 kilometers. PW-9 Sanju also deposed that he could not tell which accused was personally searched by which police official and the Memos of Recovery etc. were got signed in the Police Station.

In view of the above, the present application is devoid of any merit and, therefore, dismissed. Leave to appeal is declined.

(T. P. S. MANN)
JUDGE

(DEEPAK SIBAL)
JUDGE

February 06, 2018
monika