

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. A-499-MA of 2018

Date of decision : July 06, 2018

State of Haryana

....Applicant

versus

Sabeer and others

....Respondents

**Coram: Hon'ble Mr. Justice T.P.S. Mann
Hon'ble Mr. Justice Fateh Deep Singh**

Present : Mr. Praveen Bhadu, Assistant Advocate General,
Haryana for the applicant

Fateh Deep Singh, J.

Then accused present respondents no. 1 to 4, Sabeer, Asif, Rakib and Jamshed were put up for trial before the court of learned Additional Sessions Judge, Yamuna Nagar at Jagadhri in case bearing FIR No. 79 dated 23.5.2015, under Sections 279, 336, 307, 429, 420, 473 IPC, Sections 4-B/8 of Cow Slaughter Act as well as under Section 25 of the Arms Act pertaining to Police Station Chhachhrauli. It was through impugned findings dated 9.5.2017, the trial court giving benefit of doubt acquitted all the accused for the

charges so framed against them. That is how the State has come up before this Court in the present matter.

Heard Mr. Praveen Bhadu, Assistant Advocate General, Haryana for the applicant/State and perused the records.

The brief allegations are that ASI Nar Singh alleged that on 23.5.2015, he along with other police officials was on patrolling duty when they received information that ESI Rambir along with staff of Gau Raksha had apprehended on secret information a Canter loaded with cows and oxen in the area of village Jattonwala and upon which information, the Investigating Officer along with others reached the place and came to know that the vehicle make Canter was carrying on the front side registration number UP-11-T-9070 whereas at the rear side it was carrying registration number UP-11-T-4070 in which cows and oxen were being taken to Uttar Pradesh for slaughtering was coming from the side of Taharpur and was signalled by the police party to stop and the driver of the vehicle tried to drive through the barricades and took it towards Dadupur Jattonwala and in the process front tyres of the vehicle were got punctured and was chased for one kilometre. It is alleged that the driver and the other occupants of the vehicle fled away taking benefit of darkness leaving behind the vehicle with the animals. From the vehicle 10 oxen, out of

them one has died and two cows which were jam packed were found and taken out leading to the registration of the present case.

Upon completion of investigation the accused who were subsequently found to be lodged in District Jail, Karnal were formally arrested and upon the disclosure statements, were arrested in the present case as well. On the statement of accused Rakib, a spring actuated knife and on the statement of accused Asif a country made pistol with one live cartridge were recovered whereas consequent upon completion of investigations, accused Sabeer, Asif, Rakib and Jamshed were put up for trial under Sections 279, 336, 307, 429, 420, 473 IPC, Sections 4-B/8 of Cow Slaughter Act as well as under Section 25 of the Arms Act.

The prosecution at the trial examined PW1 SI Om Pal (since retired) who proved the FIR Ex. P1, endorsement Ex. P2 and through Arun Kumar PW2 proved superdari Ex. P3 regarding taking in possession of nine oxen and two cows followed by the testimony of SI Bhim Singh PW3 (since retired) who proved having examined the pistol on application Ex. P4 moved by the police and proved pistol as Ex. MO-1, live cartridge as Ex. MO-2 of .315 bore and his report regarding working of the pistol Ex. P5. Tarun Kumar, Halqa Patwari PW4 proved the scaled site plan Ex. P6 followed by the testimony of

Dr. Sukhveer Singh Nain, Veterinary Surgeon PW5 to prove his report Ex. P7. ASI Rambir stepped into witness box as PW6 and detailed the incident and the investigations proving his application Ex. P8, superdari Ex. P9 and taking into police possession number plates vide memo Ex. P10. Through Raj Kumar, Reader to District Magistrate, Yamuna Nagar as PW7 proved sanction order Ex. P11 under the Arms Act for prosecution of accused Asif. ASI Gurmail Singh testified as PW8 proving application moved by EASI Rambir as Ex. P8, taking into police possession the animals vide memo Ex. P9, taking into police possession number plates vide memo Ex. P10 and thereafter EHC Rajesh Kumar testified as PW9 as to the taking into police possession animals and the vehicle vide memo Ex. P9 and that of number plates as Ex. P10. Thereafter ASI Mohan Lal as PW10 detailed the investigations carried out by SI Randhir Singh and the disclosure statements of Sabeer Ex. P12, Asif Ex. P13, Rakib Ex. P14 and Jamshed as Ex. P15 relying on country made pistol Ex. MO-1, live cartridge Ex. MO-2, rough sketch of the weapon Ex. P16 and taking into police possession pistol and live cartridge through memo Ex. P17.

ASI Raj Kumar testified as PW11 about the investigations proving document Ex. P18, ASI Goverdhan as PW12 proved

documents Ex. P19 to Ex. P23 followed by the testimony of SI Randhir Singh (since retired) as PW13 who proved documents Ex. P24, Ex. P25, Ex. P12 to Ex. P15, Ex. P26, Ex. P27, Ex. P16, Ex. P17, Ex. P31, Ex. P18, Ex. P4, Ex. P5 and proved knife Ex. MO-3, its rough sketch Ex. P28 and its memo of possession Ex. P29 and rough site plan Ex. P30. The prosecution at the trial further examined Inspector Jangsher Singh as PW14, SI Jasvinder Singh as PW15, Constable Sharafat Ali as PW16 proving the RC of the vehicle Ex. P27 which was taken into police possession through memo Ex. P26 and recovery of the knife etc. ASI Nar Singh as PW17, relied upon documents Ex. P8, Ex. P32, Ex. P9, Ex. P10, Ex. P33, Ex. P34, Ex. P35, Ex. P6, Ex. P36 to Ex. P44 and thereafter prosecution closed its evidence.

The accused thereafter were put the entire incriminating evidence oral as well as documentary in their individually recorded statements under section 313 Cr.P.C. who denied the allegations but did not lead any evidence in defence.

Appreciating the submissions of the learned counsel for the applicant, it is the own stand of the prosecution that none of the accused was apprehended at the spot nor was ever identified. The material testimony is of ASI Rambir, PW6 and EHC Rajesh Kumar

PW9 who were witnesses to this episode as per the stand of the prosecution and none of these witnesses has either mentioned names of any of the accused, their descriptions when they claimed they had received the secret information. Though offence under Section 307 IPC is sought to be put up against the accused but the plain reading of the allegations as per the deposition of EHC Rajesh Kumar PW9 is that the on-coming vehicle was signalled to stop and the driver accelerated the speed of the vehicle and tried to run the vehicle over them. However, the Investigating Officer PW6 ASI Rambir Singh has nowhere stated so in his deposition and therefore, a material contradiction has come about which undermines the case of the prosecution. The only semblance of evidence as has been pointed out by the counsel for the applicant is that the accused at the relevant time were taken into custody after obtaining their custody from Karnal jail and thereafter they suffered disclosure statements. It is well settled proposition of law under the provisions of Section 26 of the Evidence Act that a confession made before a police officer is inadmissible in evidence, therefore, the State counsel could not convince this Court as to the legal worth of such a disclosure statement purported to have been individually made by the accused while in police custody. Further-more the entire witnesses of the

prosecution are police officials and to the mind of this Court none from the Gau Raksha team or independent witness have come forth to led corroboration to the version of the police. Further-more as has been recorded by the court below, no test identification parade of any of the accused has been undertaken and therefore, put a big question mark over the proven identity of the accused and much less the fact as to the ownership of the vehicle in question has come about through the concerned office of registering authority. Section 4-B of the Cow Slaughter Act, 1955 deals with the export of cows without authorization, licence or permit and Section 2(cc) of this Act defines the word 'export'. In the present case, the animals have been apprehended at the border of Haryana with Uttar Pradesh and thus, it cannot be assumed in the absence of any cogent and reliable evidence to the contrary that these animals were being exported out of Haryana. There is no semblance of evidence coming forth from the side of the prosecution through their witnesses that in what manner cruelty was being heaped upon the animals which could even bring the case of the prosecution within the ambit of provisions of Section 11 of the Prevention of Cruelty to Animals. It is golden principle of criminal jurisprudence that onus to prove its case in criminal cases rests entirely upon the prosecution to establish its

case beyond shadow of reasonable doubt. However, in the present case, a feeble attempt of the prosecution falls short of this legal requirement and rather as has been detailed and discussed above and as also been observed in the impugned findings there are material shortcomings in the prosecution story which is bereft of any merit and has been rightly rejected by the court below.

In view of the foregoing discussions, the prosecution application for grant of leave to appeal stands declined and dismissed.

(T.P.S.Mann)
Judge

(Fateh Deep Singh)
Judge

July 06, 2018
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Whether speaking/reasoned ?	Yes/No
Whether Reportable ?	Yes/No