

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

220

CRR-38-2008 (O&M)
Reserved on: 15/03/2022
Pronounced on: 28/03/2022

JAKIR

...Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Sarfraj Hussain, Advocate
for the petitioner.

Mr. Kanwar Sanjiv Kumar, AAG Haryana.

VINOD S. BHARDWAJ. J.

The instant revision petition raises a challenge to the judgement of conviction dated 03.01.2007 and order of sentence dated 06.01.2007 passed by the Court of Sub Divisional Judicial Magistrate, Ferozepur Jhirka in case FIR No.22 dated 18.01.2002 under Section 5/8 of Cow Slaughter Act registered at Police Station Punhana; as well as judgement dated 22.12.2007 passed by Additional Sessions Judge, Fast Track Court, Gurgaon, dismissing the appeal preferred by the petitioner.

2. By means of the judgement of conviction and order of sentence passed by Sub Divisional Judicial Magistrate Ferozepur Jhirka, the petitioner was sentenced to undergo rigorous imprisonment for a period of one year, however, the said sentence was reduced by the Additional Sessions Judge, Fast Track Court, Gurgaon to a period of six months.

FACTS:

3. Before proceeding further in the matter it is pertinent to refer to the bare essential facts as are necessary for appreciation of the controversy involved

in the instant case.

- (i) As per the case of the prosecution, the Police party headed by ASI Bhajan Lal was on patrol duty on 12th January, 2002 at about 10:45 AM at Punhana turning point.
- (ii) The police party claims to have received a secret information to the effect that petitioner-Jakir S/o Deena had stored fresh beef inside his scooter after slaughtering a cow and that in case a raid is conducted the accused can be apprehended selling beef by calling out to the general public at large.
- (iii) The police party claims to have reached the spot in order to apprehend the petitioner, however, he made good his escape and left behind the scooter as well as the beef contained in the storage compartment thereof.
- (iv) It is contended by the investigating officer that the accused-petitioner was previously known to him and hence was duly identified by him.
- (v) The scooter did not bear any registration number.
- (vi) Twenty kilograms of freshly cut beef was recovered from the polythene bag packed in the storage compartment of the scooter.
- (vii) Photographs of the scooter as well as beef contained therein were taken and the case was thereafter duly registered.
- (viii) During investigation, site plan and recovery memo of scooter as well as beef were got prepared and a sample of beef was got examined from veterinary surgeon. After completion of various formalities final report against the petitioner was submitted.
- (ix) In order to prove its case, prosecution examined as many as 05 witnesses. The veterinary surgeon appeared as PW-1 and proved his

report Ex.PB. As per which the sample tested by him were those of cow.

- (x) The investigating officer has proved various recovery memos, endorsement, site plan and other applications. The photographs were exhibited as Ex.P-3 and PW-4 appeared as a witness of the prosecution to the preparation of the relevant documents and also identified the petitioner-Jakir.
- (xi) After closure of the prosecution evidence, the entire incriminating evidence was put to the petitioner and statement under section 313 CrPC was recorded, to which the petitioner denied and pleaded that he had been falsely implicated in the said case. However no evidence in defence was led by him.
- (xii) Upon consideration of the evidence Sub-Divisional Judicial Magistrate, Ferozepur Jhirka held that the prosecution was successful in establishing the case against the petitioner and accordingly held him guilty and sentenced him to undergo imprisonment for a period of one year.
- (xiii) Aggrieved of the said judgement passed by the trial court, the petitioner preferred an appeal before The Court of Sessions Judge, Gurgaon. The said appeal was decided by the Additional Sessions Judge, Fast Track Court Gurgaon vide judgement dated 22.12.2007, whereby the Additional Sessions Judge, Fast Track Court Gurgaon upheld the judgement of conviction, however, reduced the sentence from RI 1 year to RI 6 months.

Arguments on behalf of the Petitioner:

- 4. Learned counsel appearing on behalf of the petitioner contends that

the petitioner has been falsely implicated in the aforesaid case and that the prosecution has failed to make out a case beyond the shadow of reasonable doubt against the petitioner. He has raised following arguments:-

- a) The prosecution has chosen not to join any independent witness at the time of recovery.
- b) No test identification parade was conducted by the police as well as the prosecution to establish identity of the person, especially when the petitioner is stated to have escaped.
- (c) Even though the scooter, from which the recovery was affected, was taken in possession by the police, however, no attempt was made to trace the owner of the scooter and the petitioner cannot be the link to the said scooter.
- (d) Even after the arrest of the petitioner, no recovery of any nature whatsoever at the instance of the petitioner had been effected to show that he had indulged in any cow slaughtering.
- (e) It is further argued by the learned counsel for the petitioner that no chemical examination has been carried out to determine that the seized meat was beef and that the veterinary surgeon has given his opinion only on the basis of his visual inspection of the seized meet.

Arguments by Respondent-State:

5. *Per contra*, the submissions made by the petitioner are controverted by the State counsel by alleging that mere absence of any independent witness does not vitiate the recovery. The prosecution has been able to fully establish its case. Besides, there was no reason for false implication of the petitioner. It is also contended that there was no necessity for carrying the test identification parade as the Investigating Officer had categorically stated that he personally knew the

accused and could identify him. There is no reason why such a testimony of the Investigating Officer about knowing an accused of an area, where the Investigating Officer is posted, should be disbelieved. It is, thus, argued that failure to determine the ownership of the scooter in question would be irrelevant once the Investigating Officer had seen the accused at the place of occurrence and having escaped.

6. I have heard learned counsel for the parties and have gone through the judgements impugned by the petitioner and have also considered the rival submissions made by the parties.

ANALYSIS:

7. Insofar as, the argument of the petitioner that no independent witness had been joined by the police at the time of raid and recovery is concerned the same does not vitiate the recovery. The necessity to join an independent witness is a rule of prudence and not a requirement of law. There is nothing on record to suggest as to why the petitioner shall be falsely implicated by an Investigating agency. Besides, no evidence has been led by the petitioner to cast a suspicion on the raid conducted by the police party. It is too well known that it is difficult to secure ready and willing independent witness from the general public. The case of the prosecution cannot be demolished for a mere failure on the part of the police to associate an independent witness from the general public. The petitioner has failed to point out any illegality, infirmity or perversity either in the manner of recovery or the recovery itself. He has also not been able to establish any motive with the police party or the investigating agency to falsely implicate the petitioner in the said case.

8. Insofar as, the second argument of the petitioner with regard to the absence of the test identification parade is concerned, the same is rendered bereft

of any strength or merit considering the fact that the Investigating Officer had specifically stated that he knew the accused, who had made good his escape. There was hence no occasion or reason for conducting any test identification parade. It has been held by the Hon'ble Supreme Court in the matter of *Munshi Singh Gautam Versus state of Madhya Pradesh, 2005 (1) RCR Criminal 361 (SC)* that failure of the prosecution to hold a test identification parade does not render the evidence inadmissible. The aforesaid view was upheld in the judgement of *Amitsingh Bhikamsingh Thakur Versus State of Maharashtra, 2007 (1) RCR (Criminal) 619 (SC)*. Hence the argument of the petitioner is without merit.

9. Insofar as the submission of the counsel for the petitioner that the ownership of the scooter was not established, the said argument also does not find any merit. The Investigating Officer had specifically stated before the Court in his deposition that he had seen the petitioner selling the meat in question on the said Scooter. Resultantly, the factum of ownership would be inconsequential. Assuming for the sake of argument that the petitioner was not the owner of the vehicle, yet the owner cannot be held vicariously liable for being criminally prosecuted, considering the fact that prosecution has been able to establish that it was the petitioner who was in possession of the scooter at the time of registration of the case and had made good his escape.

10. Insofar as, failure on the part of the prosecution to establish any further recovery to corroborate the commission of offence by the petitioner is concerned, the same would not defeat the case of the prosecution. Effecting of any further recovery would only be an additional contemporary evidence which would be admissible only to the extent of a corroborative material to draw a presumption against the petitioner. The petitioner is being tried for the recovery affected and he cannot be held innocent on an argument that no further recovery had been affected

after the arrest of the petitioner, hence, it must necessarily be presumed that he had not committed the offence, Such an argument is fallacious and is not tenable in law.

11. Having dealt with the aforesaid issues, it now takes me to the final and substantial argument raised by the counsel for the petitioner. It is submitted by the learned counsel that there is no chemical examination of the recovered meat in order to determine whether the same was beef. He has argued that the veterinary surgeon, who had appeared as PW-1 had deposed in his evidence that the recovered article was beef on the basis of his visual examination and not on the basis of any chemical determination/lab examination. There is no lab report placed on record by the prosecution to establish that the recovered meat was beef. Learned State Counsel has also failed to refer to any lab report to establish that the recovered meat was beef. Once the petitioner was being tried for offences under the Cow Slaughter Act, it was essential and integral for the prosecution to establish that the recovered meat was beef. Such determination cannot be made on the basis of physical examination. The same being integral and fundamental to the criminal prosecution of the petitioner, in the absence of any lab report/chemical examination to conclusively determine that the recovered meat was beef, the petitioner cannot be held liable under the Cow Slaughter Act.

12. Under the given circumstances, I am of the opinion that prosecution has failed to establish conclusively and beyond a shadow of reasonable doubt that the petitioner had indulged in slaughtering of cow and sale of beef. The report filed by the veterinary surgeon is a document that may at best create a suspicion. However, it is well settled position in law that suspicion, howsoever grave, cannot be substituted for evidence. The petitioner is thus entitled to the benefit of doubt.

13. The judgement of conviction 03.01.2007 and order of sentence dated

06.01.2007 passed by the Court of Sub Divisional Judicial Magistrate, Ferozepur Jhirka and the judgement dated 22.12.2007 passed by Additional Sessions Judge, Fast Track Court, Gurgaon are accordingly set aside and the petitioner is accordingly acquitted.

Petition allowed.

(VINOD S. BHARDWAJ)
JUDGE

28/03/ 2022
S.Sharma(syr)

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