

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

**CRM-A No.1244-MA of 2018 (O&M)
Date of Decision:02.11.2023**

State of Haryana

... Applicant/Appellant

Versus

Usman and another

... Respondents

**CORAM : HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Manish Dadwal, Advocate
for the applicant-appellant.

Mr. Kamaldeep Sehra, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. The present application has been filed under Section 378 (3) of the Code of Criminal Procedure, 1973 seeking leave to appeal against the judgment dated 15.01.2018 passed by the learned Additional Sessions Judge, Karnal whereby the respondents-accused were acquitted in FIR No.839 dated 07.10.2016 under Sections 279, 336, 307 IPC and Section 11-D of the Prevention of Cruelty to Animals Act, 1960 registered at Police Station Civil Lines, Karnal.

2. Brief facts of the prosecution case are that on 07.10.2016 at 3.30 A.M., when SI Sultan along with other police officials was on patrolling duty on the Meerut road turn point GT Road, Karnal, he received a secret information that one Pickup Vehicle No.UP15-CT-4714 loaded with beef was coming from the ITI Chowk to UP side, Karnal. On the basis of secret information, the police party installed barricades. Seeing a Pickup vehicle coming from Sector 6, GT Road, Karnal, the SI signalled to stop the said vehicle. On seeing the policy party, the accused persons slowed down the speed of the vehicle but in order to

escape, they again accelerated the speed of the vehicle and even tried to run over the police officials, who luckily escaped from the impact. The said vehicle had fallen into ditches and turned turtle and the SI along with the help of other officials nabbed the accused persons, who disclosed their identity as Usman son of Faimaan and Saiful son of Giasudin, residents of Mohali, Punjab. On search of the vehicle, beef was found therein, covered with the bed sheet. The vehicle along with beef was taken into custody by the police. Ruqa was sent to the police station through HC Vinod Kumar on the basis of which formal FIR was registered.

3. The vehicle was weighed along with meat recovered and its samples were sent for report to the Head of the Department, Veterinary Public Health and Epidemiology, Luvas, Hisar. Statements of witnesses were recorded under Section 161 Cr.P.C. and after completion of investigation challan was presented under Section 173 Cr.P.C. After completing the formalities of Section 207 Cr.P.C., charges were framed against the accused persons under Sections 279, 336, 307/34 IPC and Section 11 of the Animal Cruelty Act, 1960 to which they pleaded not guilty and claimed trial. The trial Court after appreciating the evidence both documentary and oral adduced before it, acquitted the respondents-accused from the charges framed against them vide judgment dated 15.01.2018. Aggrieved by the said judgment, prayer for grant of leave to appeal is sought by the applicant by way of instant application.

4. Learned counsel for the applicant-appellant submits that the prosecution had proved its case beyond a shadow of reasonable doubt by examining as many as 10 witnesses, who corroborated the prosecution version. The respondents-accused had tried to run over the police officials with their vehicle with an intention to kill them. Moreover, the respondents-accused were found in possession of 2260 kgs of meat as duly proved by the report Ex.P10 prepared by

Dr. Sushila Mann, which was sent by PW4 Dr. N.K. Mahajan to the concerned police station vide Ex.P11. As per the said report, the meat sample was confirmed of buffalo specie. Therefore, the counsel for the applicant-appellant prays for grant of leave to appeal against the impugned judgment.

5. Per contra, learned counsel appearing for the respondents-accused submits that the learned trial Court has correctly appreciated the evidence adduced before it and therefore, no ground for interference is made out.

6. We have heard learned counsel for the parties and after having gone through the records of the case, we find that the finding of acquittal recorded by the trial Court is reasonable and logical. The prosecution has miserably failed to establish its version. Admittedly, the meat recovered was of buffalo specie, which is not banned under the Haryana Gauvansh Sanrakshan and Gausamvardhan Act, 2015. As per Section 2 (a) of the said Act, 'beef' means flesh of cow in any form including flesh of cow contained in sealed containers and imported in the State. Section 2 (c) defines 'cow', which means and includes a bull, bullock, ox, heifer or calf and a disabled, diseased or barren cow. Thus, in the opinion of this Court, finding rendered by the learned trial Court that the prosecution had failed to establish that recovery of buffalo meat is punishable offence warrants no interference. Furthermore, there is glaring contradiction in the statement of PW3 and PW6. PW3 stated that vehicle was being plied by the respondents-accused in the middle line of the road and the police party was standing in the *kutch*a portion of the road and therefore, there was no occasion to run over the police party. PW6 had stated that the vehicle was stopped in *kutch*a portion of the road and it did not fall into ditches whereas PW3 stated that the vehicle had fallen into ditches. Moreover, the learned trial Court has rightly observed that when the respondents-accused were well aware that they were not

doing any illegal act by transporting the meat in their vehicle, there was no motive for them to run over the police party with an intention to kill them.

7. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. The presumption of innocence further gets reinforced on the acquittal of the accused. (See *H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023*; *Kali Ram v. State of H.P., 1973 (2) SCC 808* and *Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415*).

8. In view of the facts and circumstances of the case, this Court finds that the defence has been successful in making serious dent in the prosecution case and that the prosecution has miserably failed to establish its version beyond reasonable doubt. Learned counsel for the appellant has failed to point out any perversity or illegality in the findings recorded by the learned trial Court, which warrants interference by this Court. As such, there is no merit in the present application and the leave to appeal is declined. Resultantly, the main appeal is also dismissed.

(SUDHIR SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

November 02, 2023
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No