
(2011) 04 P&H CK 0335
In the Punjab And Haryana At Chandigarh
Case No : CRR No. 676 of 2011 (O and M)

Ibbar @ Ibrahim

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 313
Punjab Prohibition of Cow Slaughter Act, 1955 — Section 3, 5, 8

Citation : (2011) 2 ILR (P&H) 814 : (2011) 3 RCR(Criminal) 134

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Alok Singh, J.—Accused by invoking revisional jurisdiction of this Court is assailing judgment dated 13.6.2009 passed by the Judicial Magistrate First Class, Ferozepur Jhirka and judgement dated 10.2.2011 passed by the Additional Sessions Judge, Nuh, whereby accused was found guilty for commission of offence punishable u/s 3/8 and 5/8 of the Punjab Prohibition of Cow Slaughter Act, 1955 (hereinafter referred to as the 1955 Act) and was directed to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs. 5000/- u/s 3/8 of the 1955 Act and in default of payment of fine, to further Undergo rigorous imprisonment for 90 days; he has further been directed to undergo rigorous imprisonment for a period of three years and to pay fine of Rs. 1000/- u/s 5/8 of the 1955 Act, and in default of payment of fine, to further undergo imprisonment for 90 days. Both the sentences were directed to run consecutively i.e. one after the other. Appeal filed by the accused was also dismissed with the modification that both the substantive sentences awarded to the accused shall run concurrently.

2. The prosecution story is that on 1.1.2008, HC Devi Ram with other police officials, was out of patrolling and crime detection and was present at Badarpur T-point in area of Police Station Nagina, where he received a secret information

that Ibbar alias Ibrahim son of Umar Mohammad, Caste Kasaai, Resident of village Badarpur, deals in slaughtering cows. On that day he had slaughtered a cow and was going to sell beef from his village to Bukharaka on bicycle and if police picket was held on Katcha path from Badarpur to Bukharaka, he could be caught red handed carrying beef on his bicycle. The secret information was reliable and trust-worthy. HC Devi Ram held nakabandi on Bukharaka to Badarpur Katcha path and after half an hour, one person was seen coming on a bicycle with a gunny bag on rear seat. Who on seeing the police party tried to turn back. HC Devi Ram with his companions followed him, who on seeing the police party dropped the bicycle and ran in mustard fields. He was chased by police party but made his escape good. He was identified by secret informant as Ibbar @ Ibraim S/o Umar Mohd R/o Badarpur. On returning to the spot, the gunny bag was found containing 45 kilograms beef. HC Devi Ram prepared rukka and sent the same to SHO P.S. Nagina on which FIR No. 1 dated 1.1.2008 under Sections 3/8 and 5/8 of the Act was recorded. He took the bicycle and beef in possession and prepared rough site plan of the place of recovery and recorded statements of prosecution witnesses u/s 161 Code Criminal Procedure On the same day he produced the recovered meat before Dr. Sanjeev Khan, Veterinary Surgeon Sakras who examined the same and opined that the recovered meat was beef. Thereafter accused was arrested after obtaining orders from Illaqua Magistrate, the beef was destroyed After completion of investigation and other formalities challan u/s 173 Code Criminal Procedure was prepared and presented in the Court of Illaqua Magistrate for putting the accused on trial.

3. Prosecution to prove prosecution story has produced Dr. Sanjiv Khan, Veterinary Surgeon PW1, HC Devi Ram PW2, Constable Amar Singh PW3, EHC Har Bhajan Singh PW4 and AS1 Fazruddin PW5. Statement of accused u/s 313 Code Criminal Procedure was recorded thereafter. Accused did not plead guilty and claimed trial.

4. I have heard learned counsel for the parties and have carefully perused the record.

5. Learned counsel for the revisionist - accused has vehemently argued that accused was not arrested from the spot. He has further stated that neither secret information was reduced in writing nor identification of the accused by the secret informer on the spot was reduced in writing nor any identification parade was carried out to identify the accused. Learned counsel for the revisionist - accused has further argued that no chemical examination was done to find out as to whether meat is of beef. He has further stated that statement of Dr. Sanjiv Khan PW1 to the effect that he has two years experience to say that the meat is of beef, is not sufficient. Learned counsel for the revisionist - accused has further argued that neither petitioner was found slaughtering cow nor he was found selling beef. He has further argued that as per the data collected by him through the internet of the various authorities, meat of beef should be bright to dark red in colour and fat thereon should be white or cream white. He has further argued

that chemical test was must to find out as to whether meat belongs to beef and was having fatty assets of the beef.

6. Learned Assistant Advocate General, Haryana, has vehemently argued that Dr. Sanjiv Khan PW1 has stated on oath that on physical examination, meat was found of beef containing yellow fat thereon. She has further argued that since petitioner was found carrying the beef measuring 45 Kgs, hence it is rightly presumed that he was carrying the beef for the purpose of selling after slaughtering the cow. Therefore, no interference is called for in the findings of the Courts below.

7. As per datas available under "Meat and Meat products" expert has opined that different meat shall have different colour and different fat as reproduced in paras 4, 5 and 6 of the revision, which read as under :-

8. Undisputedly, no chemical examination was done on the meat in question to find out as to whether that meat is of beef and was containing fat as per the chart given in para 4, 5 and 6 of the revision petition, which is being reproduced hereunder:-

Species

Meat

Fat

Beef

Bright to dark red

White or cream white

Goat

Light to dark red

Chalk white

Pork

Grey pink to grey

red White

Fat

Palmet

ic

Stearic

Palme Toleic

oleic

Linoleiclinolenic

Arachi doni c

Beef

29

20

42

Pork

28

13

3

46

Mutton

25

25

39

5. That in the article "Choosing The Best Cuts of Beef it is mentioned that the fat around the edges of the beef should be white to ivory. Similarly in the article "How to choose fresh Meat", regarding beef it is provided as under :-

All fresh beef should be deep in color and appear "juicy" and wet on the butcher's table. Dry, dark red beef has been exposed to the air far too long. "Marbling" is the term used to describe fat funning through the meat. This give the meats its flavour and tenderness. Also, beef fat should be creamy, and not yellow in color.

6. That the University of Illinois Extension in its article "Sourcing high quality Beef: The Retailers Guide, under the head Color has mentioned as under :-

9) Color-Research has shown that muscle color explains 15 to 23% of the variation in beef palatability. The importance of color is reflected by consumer preference and juiciness. Fresh beef should be cherry red (below) in color. Diet, breed, and animal age affect fat color. Optimum fat color for beef is white.

9. Learned Assistant Advocate General has not disputed different studies as stated in paras 4, 5 and 6 of the revision.

10. In the opinion of this Court it would be totally unsafe to hold that meat was of beef on seen by naked eye without any chemical examination thereon. Moreover, Dr. Sanjiv Khan PW1 has stated on oath that meat recovered was

having yellow fat thereon. While as per Article "Meat and Meat Products" as reproduced hereinbefore, beef must have fat of white or cream colour.

11. Undisputedly petitioner was not arrested from the spot. As per prosecution story, petitioner while fleeing from the spot after leaving the bicycle and the bag tightened on the rear seat of the bicycle, containing meat, was identified by the secret informer on the spot. However, statement of the secret informer was not reduced in writing. In the opinion of this Court, alleged prosecution story that petitioner was also identified by HC Devi Ram while fleeing from the spot in the mustard filed, does not inspire confidence because petitioner was never arrested before by the police. How petitioner was known to HC Devi Ram is not made clear by the prosecution. Floating statement of HC Devi Ram that he knew the accused prior to the incident seems to be floating statement.

12. No knife, kulhari or Gutka was recovered from the accused to say that he has slaughtered cow to make the offence punishable u/s 3/8 of the 1955 Act. None has seen him slaughtering the cow or selling the beef to make out the offence u/s 3/8 or u/s 5/8 of the 1955 Act. There must be a positive evidence that petitioner was found slaughtering the cow or was selling the beef.

13. In view of the fact that petitioner was not found slaughtering cow or selling the beef and was not arrested from the spot and no chemical examination was done to find out that meat is of beef, it would not be safe to hold the petitioner is guilty for an offence punishable under Sections 3/8 and 5/8 of the 1955. Prosecution story does not inspire confidence. In criminal cases, guilt can not be said to have been proved only on the basis of presumption or assumption.

14. Revision petition is allowed. Impugned orders are set aside. Petitioner be set free immediately, if not wanted in any other case.