
(2003) 02 P&H CK 0147
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 541 of 1999

Jumme Khan

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 401
Evidence Act, 1872 — Section 9

Citation : (2003) CriLJ 2675 : (2003) 2 RCR(Criminal) 410

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : B.S. Rana, for the Appellant; Sanjiv Dahiya, AAG, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The challenge in the present revision petition is to the order of conviction of the petitioner for an offence under Sections 5 and 8 of the Cow Slaughter Act. The petitioner has been convicted by the learned Trial Magistrate for an offence or selling of beef in the area of village Barka Allimpudinpur amidst kikar trees and sentencing him to undergo S.I. for one and half years and to pay fine of Rs. 3000/- for the offence punishable u/s 8 of the Act for contravening the provisions of Section 5 of the Act.

2. The prosecution case was that on 1.1.1994 the Police Party headed by Sadhu Ram HC, consisting of Jai Pal HC and constable Fateh Singh was present at bus stand when an informer came there and informed them that Jamme Khan son of Manhori, resident of village Barka Alimudinpur is selling beer in the northern side or his village amidst kikar trees at the rate of Rs. 4/- per kilogram. He would give beef equal to the weight of the wheat also. The police was informed that if raid was conducted seller could be caught red handed. Rukka was sent through constable Fateh Singh to the Police Station. Raid was conducted and after recording of formal FIR the police started investigation. After completion of the investigation, report u/s 173 Cr.P.C. was presented. The prosecution examined

HC Jai Pal Singh P.W.1, Sadhu Ram HC PW 3 and Tilak Raj HC as P.W.4. The prosecution also produced Dr. Pramod Kumar, veterinary Surgeon as PW.2 and produced report of beef examination Ex.PW 2PW/A. The accused in his statement u/s 313 Cr.P.C. denied the prosecution allegations. The learned trial court as well as the First Appellate Court found that the prosecution had been able to prove the sale of beef by the petitioner in the area of village Barka Alimudinpur and thus, he has committed an offence u/s 5 punishable u/s 8 of the Act.

3. In the present revision petition the petitioner has disputed the finding recorded by the courts below on the ground that the informant who has given the information has not been produced and no Test Identification Parade was held, therefore, the identity of the petitioner as the person having selling beef is not proved. In support of his argument, the petitioner placed reliance on *Suresh Chandra Bahri v. State of Bihar* 1994 (3) RCR 1. It may be noticed that the petitioner was not apprehended at the spot. It was further argued that no independent witness has been joined by the prosecution. The prosecution has not disclosed the name of the persons who have refused to join the investigation. In support of his argument he has relied upon 1997 (4) RCR 40 and *Chhabil Das v. State of Haryana* 1998 (1) RCR 133.

4. PW 1 HC Jai Pal has stated in his examination-in-chief that the accused Jumme Khan was selling beef in loud voice. PW 3 Sadhu Ram, the Investigating Officer has also stated that he came to know about the name of the accused immediately at the spot. His name has been mentioned in the rukka Ex.PW 3/A as well as in the FIR Ex.PW 4/A. P.W.3 Sadhu Ram has also conducted personal search of the accused. In these circumstances, question which arises is whether the Test Identification Parade was required to be conducted by the Investigating Agency. The purpose of Test Identification Parade is to have corroboration to the evidence of eye witnesses in the form of earlier identification. Substantive evidence of a witness is the evidence in the court. If substantive evidence is found to be reliable then absence or corroboration by Test Identification Parade would not be in any way material to the prosecution case. That is the view of the Hon'ble Supreme Court in *Sheikh Hasib alias Tabarak Vs. The State of Bihar*, and *Rameshwar Singh Vs. State of Jammu and Kashmir*, and affirmed in 2000 (3) SCC 468. The Hon'ble Supreme Court in 2000 (1) SCC 417 has held that the identification Parade are not primarily made for the court. They are meant for investigation purposes.

5. Recently, the Hon'ble Supreme Court has *Dana Yadav alias Dahu and Ors. v. State of Bihar* 2002 (2) SCC 295 has considered the entire law pertaining to the test identification parade and held that the evidence of identification is relevant piece of evidence u/s 9 of the Evidence Act where the evidence consists of identification of accused at his trial. The identification of an accused by a witness in court is substantive evidence whereas evidence of identification in the test identification parade is though primary evidence but not substantive one and same can be used only to corroborate identification of the accused by a witness

in the court. Identification Parades are held during the course of investigation ordinarily at the instance of investigating agency for the purpose of enabling the witness to identify either the properties which are subject-matter or the persons who are alleged to have been involved in the offence, so as to provide with material to assure itself that the investigation is proceeding on the right lines. It has been held that failure to hold Test Identification Parade does not make the evidence of identification in court inadmissible. Rather the same would be very much admissible in law. It was held by Hon^{ble} Supreme Court as under:

"It is well settled that identification parades are held ordinarily at the instance of the investigating officer for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of the alleged offence or the persons who are alleged to have been involved in the offence. Such tests or parades, in ordinary course, belong to the investigation stage and they serve to provide the investigating authorities with material to assure themselves if the investigation is proceeding on right lines. In other words, it is through the identification parades that the investigating agency is required to ascertain whether the persons whom they suspect to have committed the offence were the real culprits. Reference in this connection may be made to the decisions of this Court in cases *Budhsen, S.K. Hasib, Rammeshwar Singh v. State of J&K* and *Ravindra v. State of Maharashtra*.

6. It is also well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Question is, what is its probative value? Ordinarily, identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in test identification parade or any other evidence. The purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. We are fortified in our view by a catena of decisions of this Court in the cases of *Kanta Prashad Vs. Delhi Administration*, *Kanan and Others Vs. State of Kerala*, *Mohanlal Gangaram Gehani Vs. State of Maharashtra*, *State of Maharashtra Vs. Sukhdeo Singh and another Vs. State of Maharashtra Through C.B.I.* *Vs. Sukhdev Singh alias Sukha and others*, *Jaspal Singh alias Pali and others Vs. State of Punjab*, *Raju alias Rajendra Vs. State of Maharashtra*, *George v. State of Kerala (1998) 4 SCC 805*, *State of Himachal Pradesh Vs. Lekh Raj and Another*, and *Raman Bhai Naran Bhai Patel and Others Vs. State of Gujarat*, ."

6. The question is what is the probative value of identification parade keeping in view the various principle of law laid down by the Hon"ble Supreme Court, I am of the opinion that the identity of the accused in the commission of offence cannot be disputed. It is in the statement of PW 1 Jai Pal that it was the accused who was selling beef in loud voice. PW 3 Sadhu Ram has stated that he came to know about the name of the accused immediately at the spot. Mere fact that the petitioner was not arrested at the spot will not make his identify doubtful. He has been named in the rukka itself and has been identified by the witnesses. The argument that the informant has not been produced is of no consequence. Since PW 1 and PW 3 have identified the accused as the person who was selling beef. The judgment reported as 1994 (3) RCR 1 (supra) relied upon by the petitioner is clearly distinguishable. That was a case where the accused was identified by the witnesses in the court for the first time when the accused was not known to the witness. The accused was a stranger to the witnesses. In the present case PW 1 and PW 3 have identified the accused as the person who was selling beef. They were the persons who had raided the spot and recovered weighing scale and weights, knife as well as 30 kilograms of beef. On seeing the police party the petitioner has run away. In addition thereto both the courts below have found that the identity of the accused could not be disputed. There is no reason to implicate the accused. No case of enmity has been set up.

7. The argument that the independent witnesses have not been joined again cannot be accepted. It has been stated by Jai Pal PW 1 that they had tried to join many persons but none agreed to join the investigation. Since the police had secret information regarding selling of beef, the police could not wait for joining of independent witnesses so as to enable the accused to abscond from the spot. Joining of independent witness is rule of prudence. The testimony of the police officials has been found reliable by both the courts. There is no circumstance so as to doubt the credibility of the police officials. There is no circumstance on record as to why the police officials are deposing against the petitioner and implicating him for an offence u/s 5 of the Act.

8. Consequently, I do not find any material irregularity or illegality in the findings recorded by the courts below. Consequently, the present revision is dismissed.