

STATE OF HARYANA
v.
RAJMAL AND ANOTHER
(Criminal Appeal No. 2203 of 2011)

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NOVEMBER 25, 2011

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[ASOK KUMAR GANGULY AND JAGDISH SINGH
KHEHAR, JJ.]

Punjab Prohibition of Cow Slaughter Act, 1955:

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s.8 – Conviction under, by courts below, reversed by High Court on grounds of absence of independent witness from the locality at the time of conducting raid, absence of evidence to prove that the accused persons were the owners of the house and were in exclusive possession of the house where raid was conducted and non-identification of accused – On appeal, held: None of the grounds put forward by High Court were sustainable – Trial court found that there was cogent evidence to show that both the accused persons were known to the witnesses from prior to the date of incident and they ran away, by scaling the wall, after seeing the police party and that accused persons did not make out any case of animosity of the official witnesses against them – The first appellate court also recorded that Investigating Officer had clearly stated that he knew the accused persons because he had apprehended them in another case and this statement was not challenged in cross-examination – In view of the admitted factual position, reasoning of High Court in its revisional jurisdiction that in the absence of independent local witness the prosecution case was not worthy of credence cannot be accepted – In upsetting the concurrent finding of the courts below, about the identification of the accused persons, High Court had not given any reason – The revisional jurisdiction of High Court u/s. 439 Cr.P.C. is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a

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- A manifest error on a point of law resulting in a flagrant miscarriage of justice – It cannot be held that the interference by the High Court on the question of identification of the accused persons in facts of the case was either proper or legally sustainable – *Code of Criminal Procedure, 1973* –
- B: s.439 – Revision.

Search and seizure – Held: An illegal search does not vitiate the seizure of the article.

- ss.3, 4, 8 – Ownership of the place where act of
- C slaughtering done – Requirement of – Held: Reading of s.3 and s.4 together would show that the person contravening s.3 cannot put up a defense that the act of slaughter was being done in a place, of which he is not the owner or in respect of which he does not have the conscious possession –
- D Slaughter of Cows, subject to exceptions u/s.4, in any place, is prohibited u/s.3 and penalty for doing so is provided u/s.8 – The case of the accused persons was not covered under the exceptions in s.4 – No such defense was ever taken – Therefore, order of acquittal by the High Court was legally not sustainable.
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Words and phrases: Word 'slaughter' – Meaning of.

- The prosecution case was that on receipt of secret information that the accused persons were slaughtering cows in their house, a raid was conducted. On seeing the police party, both the accused persons scaled the wall and fled away from their house by taking advantage of darkness. The investigating officer found 70 Kgs. of fresh beef, one skin of cow, one axe, two blood stained daggers and four weak and infirm cows. The accused persons were convicted under Section 8 of the Punjab Prohibition of Cow Slaughter Act, 1955. The first appellate authority upheld the order of the trial court. The High Court in its revisional jurisdiction reversed the concurrent finding of the courts below on the ground that no
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independent witness from the locality was present at the time of conducting raid; that no evidence was led to prove that the accused persons were the owners of the house; that it was also not established that the accused persons were in the exclusive possession of the house and as such they cannot be said to be in conscious possession of the house; and that the accused persons were not identified. The instant appeal was filed challenging the order of the High Court.

Allowing the appeal, the Court

HELD: 1. None of the grounds put forward by the High Court in the impugned judgment was sustainable. The trial court found that there was cogent evidence on record to show that both the accused persons were known to the witnesses from before and they ran away, by scaling the wall, after seeing the police party. The trial court also recorded a finding of fact that accused persons did not make out any case of animosity of the official witnesses against them. The first appellate court also recorded that P.W.-3/Investigating Officer has clearly stated that he knew the accused persons because he had apprehended them in another case and the said statement of the P.W.-3 was not challenged in cross-examination. Nor the accused persons ever questioned that the witnesses knew them prior to the date of the occurrence. The appellate forum also recorded that accused persons had not suggested that they were falsely implicated in the case. In view of this admitted factual position, this Court cannot accept the reasoning of the High Court in its revisional jurisdiction whereby the High Court found that in the absence of independent local witness the prosecution case is not worthy of credence. The factual conclusion of the High Court was contrary to the evidence on record. [Para 6-9] [354-E-H; 355-A-C]

- A 2. In upsetting the concurrent finding of the courts below, about the identification of the accused persons, the High Court had not given any reason. The revisional jurisdiction of the High Court under Section 439 Cr.P.C. is to be exercised, only in an exceptional case, when
- B there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice. Going by the said principles, it cannot be held that the interference by the High Court on the question of identification of the accused persons in facts of the case was either proper or legally sustainable.
[Para 10, 12, 13] [355-D-G-H; 356-A]

State of A.P. vs. Pituhuk Sreeinvana Rao (2000) 9 SCC 537; Amar Chand Agarwala vs. Shanti Bose and another AIR 1973 SC 799: 1973(3) SCR 179 – relied on.

- D 3. An illegal search does not vitiate the seizure of the article. The only requirement of law in such cases is that the Court has to examine carefully the evidence regarding the seizure. But beyond this no further consequences ensues. Following the said principle, there was no error committed by the courts below by proceeding on the material collected, as a result of the seizure of materials.
[Para 15, 16] [356-C-E]

Radha Kishan vs. State of Uttar Pradesh AIR 1963 SC 822: 1963 Suppl. SCR 408 – relied on.

- G 4. The other two points on which the High Court chose to interfere, namely the ownership of the house or the conscious possession of the house as a valid requisite before the accused persons could be held guilty under Section 8 of the said Act were clearly based on a misreading of the clear provision of the Act. The said Act, which was enacted to give effect to the provisions of Article 48 of Directive Principle of State Policy and which is still in force, prohibits cow slaughter in Section 3. The

expression "slaughter" is defined in Section 2(e) of the Act as killing by any method whatsoever and includes maiming and inflicting of physical injury which in the ordinary course will cause death." Reading of Section 3 and Section 4 together would show that the person contravening Section 3 cannot put up a defense that the act of slaughter was being done in a place, of which he is not the owner or in respect of which he does not have the conscious possession. Slaughter of Cows, subject to exceptions under Section 4, in any place, is prohibited under Section 3 and penalty for doing so is provided under Section 8. The High Court's finding that the guilt of the accused persons was not proved in the absence of proof of their ownership or conscious possession of the house where slaughter took place, is a finding which is de-hors the said Act and is clearly not legally sustainable. The case of the accused persons was not covered under the exceptions in Section 4. No such defense was ever taken. Therefore, the impugned order of the High Court was legally not sustainable. [Paras 17-18, 20, 21-23] [356-F-H; 357-G-H; 358-A-E]

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Case Law Reference:

(2000) 9 SCC 537 relied on Para 11

1973 (3) SCR 179 relied on Para 12

1963 Suppl. SCR 408 relied on Para 15

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2203 of 2011.

From the Judgment & Order dated 20.04.2010 of the High Court of Punjab & Haryana at Chandigarh in Criminal Revision No. 669 of 2000.

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Dr. Monika Gusain for the Appellant.

Altaf Hussain, R.C. Kaushik for the Respondents.

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- A The Judgment of the Court was delivered by
GANGULY, J. 1. Leave granted.
2. This Criminal Appeal is directed against the judgment and order dated 20.04.2010 of the High Court of Punjab and Haryana in Criminal Revision No.669/2000, whereby the High Court acquitted the respondents-accused persons (hereinafter "the accused persons") from all the charges levelled against them under Section 8 of the Punjab Prohibition of Cow Slaughter Act, 1955 (hereinafter "the Act"). By this impugned order, the judgment and order passed by the Sub-Divisional Judicial Magistrate, Ferozepur and the appellate order passed by the Addl. Sessions Judge, Gurgaon were set-aside by the High Court in revision.
- D 3. The accused persons were convicted under Section 8 of the Act and sentenced to undergo rigorous imprisonment for a period of one year by the Court of Sub-Divisional Judicial Magistrate, Ferozepur vide judgment dated 14.09.1998 in Crl. Case No.23/98. On Appeal, this order of conviction and sentence was confirmed and upheld by the Additional Sessions Judge, Gurgaon vide order dated 01.06.2000 in Criminal Appeal No.20/98.
- E 4. The facts and circumstances, which are relevant, are as under:
- F (a) According to the prosecution, on 01.01.1996 Head Constable Satyabir/p.w.-3 (hereinafter "the Investigating Officer") received a secret information that the accused persons were slaughtering cows in their house and if any raid was conducted, the accused persons could be caught red-handed.
- G Consequently the investigating officer along with Head Constable Bir Singh/p.w.-2 formed a raiding party and raided the house of the accused persons.
- H (b) On seeing the Police party, both the accused persons

by scaling the wall, fled away from their house by taking A advantage of the darkness.

(c) However the investigating officer found 70 kgs of fresh beef, one skin of cow, one axe, two blood stained daggers and four weak and infirm cows. Those were seized and taken into custody vide recovery memo. Thereafter ruqa was sent to the police station, on the basis of which FIR was registered and the case was investigated. B

(d) Thereafter the accused persons were arrested and charged under Section 8 of the said Act. C

(e) At the Trial, P.W.-3/investigating officer and P.W.-2/Bir Singh, who were eye-witnesses, supported the case of prosecution and categorically deposed that accused were known to them from before and on seeing the police party, they D ran away from the place by scaling the wall.

(f) The accused persons did not lead any evidence in their defence.

(g) After the appreciation of evidence, vide judgment-dated E 14.09.1998 the Trial Court convicted the accused persons under Section 8 of the said Act and sentenced each of them to undergo rigorous imprisonment for a period of one year.

(h) The accused persons challenged the aforesaid conviction and sentence, by filing an appeal before the Additional Sessions Judge, being Criminal Appeal no. 20 of 1998. F

(i) By an order-dated 01.06.2000 the Additional Sessions Judge, after a re-appreciation of evidence, confirmed the order G of conviction and sentence passed by the Trial Court.

(j) Against that order, the accused persons preferred a revision before the High Court. H

- A (k) By impugned order-dated 20.04.2010 the High Court allowed the revision and set aside the order of conviction of the accused persons.
- B 5. The High Court in its revisional jurisdiction while reversing the concurrent finding of the Courts below indicated the following reasons:
 - I. No independent witness from the locality was present at the time of conducting raid.
 - C II. No evidence has been led to prove that the accused persons were the owners of the house.
 - D III. It has also not been established that the accused persons were in the exclusive possession of the house and as such they cannot be said to be in conscious possession of the house.
 - E IV. The accused persons were not identified and it is the prosecution case that the accused persons fled away by scaling the wall and by taking advantage of the darkness.
- F 6. We are not satisfied with the reasoning of the High Court, as none of the grounds put forward by the High Court in the impugned judgment is sustainable. If we take up the last ground first, it is clear that the aforesaid conclusion of the High Court, being a conclusion on pure questions of fact, is against the evidence on record.
- G 7. The Trial Court has found that there is cogent evidence on record to show that both the accused persons were known to the witnesses from before and they ran away, by scaling the wall, after seeing the police party. The Trial Court also recorded a finding of fact that accused persons have not made out any case of animosity of the official witnesses against them.
- H 8. In the appellate forum, the Sessions Judge has also

recorded that P.W.-3/Investigating Officer has clearly stated that he knew the accused persons because he had apprehended them in another case and the said statement of the P.W.-3 was not challenged in cross-examination. Nor has the accused persons ever questioned that the witnesses knew them prior to the date of the occurrence. The appellate forum also recorded that accused persons have not suggested that they were falsely implicated in the case.

9. In view of this admitted factual position, this Court cannot accept the reasoning of the High Court in its revisional jurisdiction whereby the High Court found that in the absence of independent local witness the prosecution case is not worthy of credence. The factual conclusion of the High Court is contrary to the evidence on record.

10. In this connection, it may be noted that in upsetting the concurrent finding of the courts below, about the identification of the accused persons, the High Court has not given any reason.

11. In *State of A.P. vs. Pituhuk Sreeinvanasa Rao* [(2000) 9 SCC 537] this Court held that the exercise of the revisional jurisdiction of the High Court in upsetting concurrent finding of the facts cannot be accepted when it was without any reference, to the evidence on record or to the finding entered by the trial court and appellate court regarding the evidence in view of the fact that revisional jurisdiction is basically supervisory in nature.

12. It has been also held by this Court in *Amar Chand Agarwala vs. Shanti Bose and another* [AIR 1973 SC 799] that the revisional jurisdiction of the High Court under Section 439 Cr.P.C. is to be exercised, only in an exceptional case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice. [para 20, page 804 of the report]

13. Going by the aforesaid principles, it cannot be held that

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- A the interference by the High Court on the question of identification of the accused persons in facts of the case is either proper or legally sustainable.

14. Now let us examine the first question on which the High Court has interfered, namely the legality of the search procedure.

- B 15. A three-Judge Bench of this Court in the case of *Radha Kishan vs. State of Uttar Pradesh* [AIR 1963 SC 822] while construing similar provision in the Cr.P.C. of 1898 held that an illegal search does not vitiate the seizure of the article. The only requirement of law in such cases is that the Court has to examine carefully the evidence regarding the seizure. But beyond this no further consequences ensues. (para 4, page 824 of the report)

- C D 16. This principle is being consistently followed by this Court and by different High Courts since then. Herein if we follow the aforesaid principle, we do not discern any error committed by the Courts below by proceeding on the material collected, as a result of the seizure of materials.

- E 17. The other two points on which the High Court chose to interfere, namely the ownership of the house or the conscious possession of the house as a valid requisite before the accused persons could be held guilty under Section 8 of the said Act, F is clearly based on a misreading of the clear provision of the Act.

- G 18. The said Act, which has been enacted to give effect to the provisions of Article 48 of Directive Principle of State Policy and which is still in force, prohibits cow slaughter in Section 3 thereof in following terms-

- H "3. **Prohibition of cow slaughter** - Notwithstanding anything contained in any other law for the time being in force or any usage or custom to the contrary, no person

shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter any cow in any place in Punjab:

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Provided that killing of a cow by accident or in self defence will not be considered as slaughter under the Act."

19. Under Section 4 there are certain exceptions to section 3. Those exceptions are as under:

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"4. Exceptions. – (1) Nothing in section 3 shall apply to the slaughter of a cow –

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- (a) whose suffering is such as to render its destruction desirable according to the certificate of the Veterinary Officer of the area or such other Officer of the Animal Husbandry Department as may be prescribed; or

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- (b) which is suffering from any contagious or infectious disease notified as such by the Government; or

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- (c) which is subject to experimentation in the interest of medical and public health research by a certified medical practitioner of the Animal Husbandry Department.

(2) Where it is intended to slaughter a cow for the reasons specified in clause (a) or clause (b) of sub-section (1) it shall be incumbent for a person doing so to obtain a prior permission in writing of the Veterinary Officer of the area or such other Officer of the Animal Husbandry Department as may be prescribed."

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20. The expression "slaughter" is defined in Section 2(e) of the Act, which is as follows:

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"2(e) - "slaughter" means killing by any method whatsoever and includes maiming and inflicting of physical injury which in the ordinary course will cause death."

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- A 21. If we read Section 3 and Section 4 together, it is clear that the person contravening Section 3 cannot put up a defense that the act of slaughter was being done in a place, of which he is not the owner or in respect of which he does not have the conscious possession. Slaughter of Cows, subject to
- B exceptions under Section 4, *in any place*, is prohibited under Section 3 and penalty for doing so is provided under Section 8.
- C 22. The High Court's finding that the guilt of the accused persons has not been proved in the absence of proof of their ownership or conscious possession of the house where slaughter took place, is a finding which is de-hors the said Act and is clearly not legally sustainable. Slaughter of the Cows is clearly prohibited under Section 3, subject to the exceptions in Section 4. The case of the accused persons is not covered
- D under the exceptions in Section 4. No such defense was ever taken.
- E 23. Therefore the impugned order of the High Court is, with respect, legally not sustainable. We therefore are unable to accept the reasons of the High Court. The appeal is allowed. The order of the High Court is set-aside and that of the learned Sessions Judge is affirmed.

D.G.

Appeal allowed.