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*M. Jain*

*Before K. Kannan, J.*

**IBBAR @ IBRAHIM,—Petitioner**

*versus*

**STATE OF HARYANA,—Respondents**

**CWP No. 676 of 2011**

19th April, 2011

*Punjab Prohibition of Cow Slaughter Act, 1955—Sections 3/8 & 5/8—Cannot be presumed that meat was beef merely on inspection by naked eye without chemical examination—Moreover, Petitioner not arrested on the spot and statement of secret informer also not reduced to writing. Knife, Kulhari or gutka was also not recovered from accused—No positive evidence that Petitioner was slaughtering the cow or even selling the beef—Petition Allowed.*

*Held*, that it would be safe to hold that Petitioner is guilty of an offence punishable under section 3/8 & 5/8 of the Punjab Prohibition of Cow Slaughter Act, 1955 in view of the fact that he was neither found slaughtering the cow nor selling the beef. Additionally he was also not arrested from the spot and that no chemical examination was carried out to confirm whether the meat is beef. Prosecution story cannot be held to inspire any confidence. Guilt cannot be said have been proved only on the basis of presumption or assumption.

(Para 9)

P. R. Yadav, Advocate for the petitioner.

Preeti Chaudhary, AAG, Haryana for the State.

#### **ALOK SINGH, J (ORAL)**

(1) Accused, by invoking revisional jurisdiction of this Court, is assailing judgement dated 13th June, 2009 passed by the Judicial Magistrate First Class, Ferozepur Jhirka and judgement dated 10th February, 2011 passed by the Additional Sessions Judge, Nuh, whereby accused was found guilty for commission of offence punishable under Section 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 under Section 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 under Section 5/8 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.

(2) 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.

(3) 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 :—

(4) 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	Palmetire	Stearic	Palme-oleic linoleic linolenic Arachidoni		
			Toleic		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."*

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

(6) 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.

(7) 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 field, 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.

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

(9) 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 guilty for an offence punishable under Section 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.

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