

Juddgement: .. . S.C.No.02/2022

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| Date of admission of case :24/01/2022 | |
| Date of Registration of case:24/01/2022 | |
| Date of decision of the case:04/11/2022 | |
| Time period : Years: 00 :Months:09 Days:11 | |
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In the court of Honourable Sessions judge of Tapi (Shri S.V.Vyas)
at Vyara

Plaintiff : Government
Versus
Accused: Mohammed Aameen
Anjum
Age about 22 years
Resident of Mangal Yard,
Yaseenmiyan Lane,
Taluka: Malegaon, Distt. Nasik
(Maharashtra)

For Plaintiff the Government : Learned Special Public Prosecutor
Shri C.B.Gamit

For Accused learned advocate Shri V.N.Chauhan(Legal Aid)

Offence: Gujarat Animal Protection Act,2012,Section 5,6,7 and Prevention of cruelty to animals Act,section 11(1)(d),(e),(f),(h) and Gujarat control of transportation of Animals Order,1975 Section-2 and Gujarat Essential Commodities and control of animals Act,2005, Section-4 and Gujarat Motor Vehicle(11 th amendment)Act,2015 Section - 125(e)

: Judgement :

(1)Cow is not only an animal but it is mother that is why it is given the name of mother.None is so grateful as a cow. A cow is the living planet of 68 crore holy places and thirty -three crore gods. The obligation of cow on the entire Universe defies description.The day when no drop of blood of cow drops on the earth all problems of the earth will be solved and the well being of the earth will be establishedThere is much talk of cow protectionand cow rearing but it is not put in to practice.Incidentsof cow murder and its illegal transportation

take place much too often.It is a matter of disgrace for the civilized society.In the perspective of today, we need to contemplate not only on religious and spiritual aspects but on its economic,social and scientific as well as health related issues. Mechanised abattoirs have come up for slaughter of cows and they are being slaughtered.Therefore there is great hazard for their life. Non-vegetarian people consume meat and cow meat is also being used for the purpose.Cow products are very useful for human life. These products mean milk,curd ,ghee,cow dung and gaumutra. Tridevis not separate from cows.It is said that they have emerged

from Adigau Surabhi .The religion is born from cow as religion is in the form of Vrushabh and son of a cow is called vrushabh.Religion has manifested itself in the form of Neel Vrushabh .Religion took the form of Vrushabh for growing of food because agriculture is not possible without Vrushabh (bull).Best food is produced from bull. In today's world the currency of natural farming has increased very much in place of chemical farming.Natural farming is based on cow. The grain produced from natural farming protects us from many diseases.It is the reason why cow is direly needed. In these circumstances the slaughter and transportation of cows is a matter of pain and sorrow..Science has proved that houses made of cowdung are not affected by atomic radiation.Use of Gaumutra ,(cow urine)is a cure for many incurable diseases. Cow is the symbol of religion.Following shlok explains the importance of cow and its principle:

यत्रगावः प्रसन्नाः स्युप्रसन्नास्तत्रसम्पदः।

यत्रगावोविषण्णाःस्युर्विषण्णास्तत्रसम्पदः॥

Where cows remain happy all wealth and property is gained.
Where cows remain unhappy wealth and property remains unhappy and disappear..

(2)The necessity for the presence of cows has been made clear from the shloka given below:

गोभिर्यज्ञाः प्रवर्तन्तेगोभिर्वेदाप्रवृर्धिताः।

गोभिर्वेदासुमदगीर्णासषड्व्यदक्रमाः॥

(All the Yajnas are installed in cows.If cow becomes extinct the univers will also cease to exist. We can't imagine Universe without

cow. Vedas also sit in cows. The origin of the Vedas with all its six organs is because of cow.

(3) It is said in Hindu Scriptures:

.माता रेद्राणां दुहिता वसूनां
स्वसादित्यानामृतस्य नाभिः।
प्र नु वोचं चिकित्से जनाय
मा गामनागामदितिं वधिष्ट।।

(Cow mother of Rudra, daughter of Vasu, sister of Aditi putras and treasure of Dhruv's Amrit. This is the reason I have explained to every thinking person not to kill the cow which is innocent and killing of which is impermissible.)

(4) In the context of the importance of cows as mentioned above if we look at the present situation it would become clear that 75% of the cow wealth has been lost or destroyed. Now only 25% has remained. A time will come when people will forget to draw the picture of cows. A period of more than 70 years has elapsed since we got independence. Not only the cow slaughter has not stopped but it is reaching its climax. The problems that exist today are because of the increase of the irascibility and hot temper. The only reason for increase is the slaughter of cows. Till this is completely prohibited the saattvik climate cannot have its effect. The decision of this case is done keeping the importance of the cow on its merits and demerits.

(5) The facts of the Plaintiff

are like this. That on the Triroad of Nava Ashrava village on the day of 18/07/2020/ at 05.30 hours a truck of Tata company bearing No:MH-04-F.P.-6936 16 cows and bullocks were being carried. These were tied with short rope and were packed tightly and there was no facility of water and forage. There were no equipments of Veterinary First-Aid. The Certificate of Competent

Officer or Veterinary Officer was also not there. The animals were being transported illegally from Gujarat to Maharashtra State. During the checking of vehicles the truck driver evading the observation of police and taking advantage of the darkness left the truck and committed the crime. The truck contained cows and bullocks number 16 valued at Rs.1,60,000. Out of which one cow and one bullock died. The truck valued at Rs.5,00,000. Thus a total muddamaal of Rs.6,6,000 was left on the site and escaped. He was arrested on 27/08/2020 at 14/15 hours. Thus he has committed the offence under Sections 5,6,7 of Gujarat Animal Control Act, 2011 and Section 11(1),(d),(e),(f),(h) of Prevention of Cruelty to Animals and Section-2 of Gujarat State Animal transportation Order, 1975 and section-4 of Gujarat Essential Commodities and Cattle Control Act, 2005 and Section 125(e) of Central Motor Vehicle Act (11 the Amendment). The plaintiff gave the complaint of this offence and crime was registered at Nizar Police Station in part-B C.R.No.11824007200327/2020.

(6) After the completion of police investigations the investigating officer had submitted chargesheet in the court of the magistrate having jurisdiction in the matter. Thereafter the accused was given police papers as per Section 207 of the Criminal Procedure Code. As this crime was under the jurisdiction of the Sessions Court, the learned Judicial Magistrate committed this case to the Sessions under Section 209 of Criminal Procedure Code.

(7) In this case chargesheet has been filed against the accused vide Exhibit-11. The accused did not confess the crime. Therefore the proceedings were carried on further.

(8) Plaintiff has submitted following oral and documentary evidence:

| Number of witness | Exhibit | Name of the witness |
|-------------------|---------|---|
| 1 | 13. | Testimony of Plaintiff Bipinbhai Rustam Bhai Chaudhari (Unarmed Head Constable) |
| 2. | 18. | .Testimony of Dr.RavibhaiBhandasbhaiGondaliya(Veterinary Officer) |
| 3. | 27. | Testimony of panch witnessBalrajbhaiBhaidasbhaiGondaliya |
| 4. | 31. | Testimony of Investigation OfficerRajsang bhai HirabhaiLoh(Police Sub-Inspector) |

Documentary Evidence:

| Seri al No | Exhibit | Particulars of the document |
|------------|---------|--|
| 1. | 14 | Panchnama of the truck packed with cows and bullocks |
| 2. | 15. | Police Complaint |
| 3. | 16. | Panchnama of the animals made at AakhakholPanjrapole(Asylum -cattlepound- for old and unservicablecattles) |
| 4 | 19. | Police List written to Veterinary Officer |
| 5. | 20. | P.M.Note No.1 of |

| | | |
|------|-----|---|
| | | the animal cow which died |
| 6. | 21. | P.M.Note No.2 of the animal bullock which died |
| 7. | 22. | P.M.Note No.3 of the animal cow which died |
| 8. | 23. | P.M.Note No.4 of the animal cow which died |
| 9. | 24. | Health Certificate of animals |
| 10. | 25. | Letter written to Police Station by the Veterinary Officer about sending P.M.Report |
| 11. | 26. | Letter written by Veterinary Officer .Nizar to Police Station about sending of Health Report |
| 12. | 28. | Panchnama of the physical condition of the acused. |
| 13. | 32. | Catalogue |
| 14. | 33. | Police inventory, memo written to Veterinary Officer for giving treatment certificate and P.M. Report |
| 15i. | 34. | Circular dated 30/10/2013 of |

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| | Assistant Director, Animal Husbandry, Gandhi nagar | |
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(9) In this matter pursis was give by the Plaintiff side vide Exhibit-35 declaring that submission of evidence is over. Special statement of the accused has been recorded .The accused has not given evidence on affidavit and has not examined any witnesses.

(10) In this case following points emerge for decision:

1. Whether the plaintiff proves that on 18/07/2020 at 05/30 hours at the village Nava Ashrava village tri road a truck of Tata company No:MH.04.F.P.6936 which was packed with cows and bullocks in all 16 and were tied with short rope and there was no arrangement for water , feed or fodder .It had no veterinary equipment for First aid and there was no certificate from the Vererinary Officer or the Competent Authority .These animals were being illegally transported from Gujarat into Maharashtra .During the vehicle checking the accused evaded police observation and taking advantage of darkness left the truck .Out of 16 animals one cow and one bullock had died on the journey. By doing this he had committed crime under Sections 5,6 7 of Gujarat Cattle Preservation Act, 2011 and sections 11(1)(d),(e),(f),(h) of Prevention of cruelty to Animals Act, 1960 and of section -2 of Gujarat State Animal Transportation Control Order , 1975 and section-2 of Gujarat essential Commodities and Animal Control Act ,2005 and section 125 of Central Motor Vehicle Act(11 the Amendment) .

2.

What is the Order?

(11) My decision on the points mentioned above is as under:

1. In affirmative
2. As per final order .

Reasons:

Point Number :1

(12)All the evidences and .oral evidences submitted by the prosecution were read.. Learned SpecialProsecutor has resigned long time ago.Thereafter no Special Public Prosecutor has been appointed by the Government. Due to this no arguments have been made from the plaintiff side.The accused is in jail since long time.The arguments of the Defence side were heard.

(13)Before we decide on the merits -demerits of the case on the basis of the facts which came on record and the evidence ,if we look at the established principles of jurisprudence then we have to take into account theestablished principle that in Criminal casetill the allegations against the accused are proved beyond doubt about the crime the accused is innocent. With this presumption the proceedings have to be continued. The burden of proof against the accused rests on the shoulders of the prosecution side.The prosecution has to prove the allegation of crime and has to produce complete and solid evidence The accused has to observe silence .The advantage of the weakness of the accused can't be taken by the prosecution side.While evaluating the evidence the court has to do the mental exercise.It has to evaluate the evidence as a common man does.Every case depends on its facts ,evidences submitted before it and the merits and demerits of the case.No specific process has been mentioned in the law for evaluating the evidence. In the same way the quality of the evidence and the credibility of the witnesses is to be kept in mind by the court. The number of witnesses and the. volume of evidence has no importance. On the basis of only one credible witness the case of prosecution can be believed as proved and an accused can be held guilty.It is not necesssry for

the prosecution to produce numerous witnesses or copious evidences. According to the well established principles of jurisprudence the chargesheet given to the accused regarding the crime committed by him is beyond doubt, unfailing and complete has to be proved by the prosecution side. If the accused clearly pleads not guilty or takes the defence that he was not present at the site of crime then he has to produce evidence to a certain extent. Though he is not required to prove his defence beyond doubt but his defence should be proved on probability. In the instant case the accused has not examined the witnesses neither has he given any evidence. In the circumstances the prosecution has to prove the chargesheet against the accused beyond doubt. It is established by the decisions of the honourable Supreme Court that if there arises a reasonable doubt in the prosecution case then the accused will get its benefit. When the case of prosecution itself creates doubt from the evidence or gives rise to doubt then it may be called reasonable doubt and its benefit will go to the accused. But doubts raised on probability or mere guess or conjectures can't be called reasonable doubt and the accused will not get its benefit. There is a big distance between 'accused has committed the crime' and 'accused might have committed the crime'. And such long distance has to be crossed by the prosecution by producing unfailing and evidence beyond doubt. Thus law expects from the prosecution best evidence. According to the criminal jurisprudence the benefit of reasonable doubt and expectation of best evidence are the two approaches which are prevalent.

. As per the established principle of criminal jurisprudence any doubt against an accused howsoever strong remains a doubt only and it can't substitute evidence. Moreover, the judge has to play two roles. He has to see to it that an innocent person is not punished wrongly. On the other side he has to see to it that the guilty does not escape from the crime. Minor incongruencies or contradictions are to be neglected while legal and important evidences are always to be kept before eyes. In

every case there appear minor or small inconsistencies or contradictions..But if such inconsistency or contradiction does not affect the prosecution case materially then it is to be ignored. Behaviour of every witness, memory power, power of thinking and power of observation are different. In the circumstances the court has to act like a miner and pay attention to legal evidence.The present case is being decided keeping all these basic principles before its eyes.

(14) The prosecution side has produced the oral evidence by plaintiff BipinbhaiRustambhai Chaudhari by exhibit-13.Looking to it the witness was discharging his duty at Nijhar Police Station as an unarmed Head Constable.He was on night duty from 17/07/2020 23.05 hours to 18/07/2020 till 6.00.Narendrabhai Rajeshbhai and JigneshbhaiRavindrabhai were on duty as homeguards in the police vehicle with the plaintiff. The driver of the police vehicle was DineshbhaiGangaram. Moreover, they were on night round at 3:45 hours.When they were checking vehicles on tri roads at Nava Aashrava village Tata truck no.MH.04.F.P.6036 came there.The home guard members got it stopped there. The plaintiff was seeking information from the truck driver but he was not giving proper replies.Therefore the plaintiff and homeguard staff went on the back side of the. truck to investigate.

They untied the tarpaulin .On Investigationof the back side they found that it was tightly packed with bullocks and cows.These animals were tied with short ropes .In the meanwhile the truck driver taking advantage of darkness fled away.Thereafter the panchs were summoned and the truck was taken in that position by another driver to Nizar Police Station Compound.Thereafter people connected with cattle rearing were called and in the presence of them and panchscows and bullocks were unloaded.There were 12 cows and 4 fourbullocks.Of these one cow of white colour and one bullock of red/crimson colour had died.There was no facility of forage or water in the truck.No instruments of Veterinary First

Aid were there. There was no earth/dust on the floor for the animals to stand on. The plaintiff made the panchnama of animals and the truck which was produced as exhibit-15 in the oral testimony. The plaintiff has given complaint on behalf of Government. This is produced as exhibit-15 in the testimony. Afterwards during police investigations an order was issued for the animals -muddamaal- to be sent to cattle pound. A panchnama was made about marking of animals. This was produced as exhibit-16 in the testimony. This witness identified the accused who was present during his testimony in the court.

This witness was cross-examined by the defence. Looking to this the statement that the accused was driving the vehicle was stated to be false. The witness has denied this. He has also denied that he had not seen the accused at the time of the incident. The accused was made to get down from the truck at the time of the incident. He had seen him in the light. Therefore he identifies the accused. This is the fact which he has stated. He refused that he had wrongly identified the accused as the driver of the truck.

Looking to the over all testimony of the plaintiff, the fact that the accused was taking the muddamaal, cows and bullocks in his truck is proved. Moreover, the fact that the accused had escaped taking the advantage of darkness is also proved. Since the muddamaal was with the accused in the truck at the time of the transportation of the progeny or offspring of the cow at the time of the incident and he had no certificate from the competent officer or permit the fact is proved. Thus looking in totality the fact that the accused was illegally transporting the progeny of cows is proved.

(15) The prosecution side has produced the oral evidence of the witness Shri Ravibhai Bhandasbhai Gondaliya which is at exhibit-18. Looking to this he was discharging his duty at Kukarmunda Veterinary Dispensary as Veterinary Officer. He was also holding

charge of Nizar Veterinary Dispensary .The Police Sub-Inspector of Nizar had telephonically informed him for necessary action regarding the animals cows 12 and bullocks -4 out of which 9 cows and 3 bullocks were weak and 1 bullock and three cows had died custody of which was taken in the matter of crime.This witness had gone to patrol pump which is situated at a slight distance from the bus stand where police had given him the list .This list is included in the testimony which was produced in the case vide exhibit-19.Moreover the witness had physically examined the live animals and did the postmortem of the animals which died.In the testimony of this witness the Postmortem of the animals which died is produced from exhibit 20 to 23 and the certificate of live animals is kept at exhibit-24.Looking to the testimony of this witness he had physically examined the live animals and done the PM. In the testimony of this witness the PM note of the animals which died is produced from exhibit -20 to 23 and the certificate of the live animals is produced at exhibit -24. Moreover looking to the testimony of the witness when he did the PM and examined animals at that time truck number M. H. 04.F.P.6936 was standing near the petrol pump and according to the statement of police animals were being transported in this vehicle.Moreover, the truck did not possess the capacity to transport 16 animals has been stated .

This witness was cross examined by the defence.Looking to which the fact has been accepted that he himself had not seen the animals being taken off the vehicle .Moreover, no marks are seen on the neck to support the fact that these were tied with short rope.But the fact of vertebral fracture on the neck was seen on one animal has been stated.

Looking to the entire evidence of this witness it proves the fact that he has taken action stated in the examination in chief.Moreover when the witness went to the site/place at that time the fact is proved that three cows and one bullock were in dead position and nine cows and three bullocks were in weak condition . The fact that this witness had treated the live animals

and carried out the postmortem of dead animals is proved. No fact has come on record that the evidence of this witness is false or untrue .

(16) The prosecution side has produced oral evidence of panch witness Balrajbhai Bhaidas bhai Gulale at exhibit -27. Looking to which the fact has been stated that on 27 August, 2020 he and other panch Bhimabhai Mansukhbhai Thakre were called to the Nizar Police Station and the panchnama of the physical condition of the accused was made. This panchnama has been produced as exhibit-28 in the testimony of this witness. Looking to the testimony of this witness on 18/08/2020 the fact is stated that he and other panch Sureshbhai Hirabhai Gulale were called to the Police Station by the Nizar Police. When the tarpaulin of the truck was being untied the driver had fled away this fact has been accepted. Moreover the police and the accused had come to the Nizar Police Station from Aashrava three roads with the truck. This fact has also been accepted.

Looking to the entire evidence of the witness the proceedings of the panchnama of exhibit 14 and exhibit 28 were done in the presence of the witness which fact is proved.

(17) Prosecution side has by exhibit 31 given the oral evidence of investigation officer Rajsang Hirabhai Loh, Police Inspector. Looking to this witness on 18/07/2020 was discharging his duty at Nizar Police Station. In the mean while the plaintiff had declared the fact of his complaint before the Police station Officer. After the crime was registered he investigated the crime after it was entrusted to him. This witness has stated the details of the investigation made by him. During the police investigations he was suspended for other reasons therefore further investigations were made by P.S.I.N.Z. Bhoya. This fact has been stated by him in his oral evidence. After completion of the investigations sufficient evidence being available against the

accused he was chargesheeted .This fact has been stated by Shri Bhoya.

This witness was cross- examined by the defence side. Looking to this the fact that the accused was arrested while he was carrying animals in the vehicle at that time he was not present on the site has been admitted by him. Moreover he has also admitted the fact that during his investigations the accused was not found and therefore he was not arrested this fact too has been admitted by him. After the accused was arrested P.S.I. did not conduct his identification parade this fact has been admitted. Other than this questions were asked to which reply could be refused.

Looking to the entire evidence of this witness himself and P.S.I. Bhoya. it comes out that they have made investigations as per law .

(Before 18) Before discussing the case on merits and demerits it seems necessary to note the provisions of Section-5 of the Animal Preservation Act,1954 and Section -6 A of Gujarat Animal Preservation Act,2011. In these provisions presumptions are given which are very important in deciding the trial.

18(1) Gujarat Animal Preservation Act,1954

Section-5 Prohibition on slaughter without certificate of Competent Authority :

(1) Notwithstanding any law for the time being in force or any usage to the contrary, no person shall slaughter or cause to be slaughtered any animal unless, he has obtained in respect of such animal a certificate in writing from the competent Authority appointed for the area that the animal is fit for slaughter.

[(1-A) No certificate under sub-section (7) shall be granted in respect of -

a. cow,

- b. the calf or cow ,whether male or female and if male,whether castrated or not
- c. a bull
- d. A bullock

Section-6-A: Prohibition on transportation of specified animals for slaughter :

No person shall transport or offer for transport or cause to be transported any animal specified in sub-section 1(A) of Section - 5 from any place within the State to any onother place withinin the State for the purpose of its slaughter in contravention of the provisions of this Act. or with the knowledge that it will be so slaughtered.

Provided that a person shall be deemed to be transporting such animal for the purpose of slaughter unless contrary is proved thereto to the satisfaction of the concerned authority or officer by such person or he has obtained a permit under sub-sectio(2) for transporting animal for bonafide agricultural or animal husbandry purpose from such authority or officer as the State Government may appoint in this behalf.

18(2)Gujarat Animal Preservation Act,2011

Section-6(A):Prohibition on transportation of the specified animals:

(1) No person shall transport or offer for transport or cause to be transported any animal specified in sub-section - 1(A)of section-5 from any place within the State for the purpose of its slaughter in contravention of the provision of this Act or with the knowledge that it is likely to be so slaughtered.

Provided that a person shall be deemed to be transporting such animal for the purpose of slaughter unless contrary is proved thereto to the satisfaction of the concerned authority or officer by such person or he has obtained a permit under sub-section (2) for transporting animal for bonafide agricultural or

animal husbandry purpose from such authority or officer as the State Government may appoint in this behalf

(19)When 'Prosecution has imputed/charged that illegal transportation of the progeny of cow was being done then we should also pay attention to the Animal Transportation Rules,1978 .The relevant provisions are as under:

Rule-46:Rules 47 to 56 shall apply to the transport by rail of cows,bulls,bullock,buffaloes,yak and calves (hereinafter in these rules referred to as cattle).

47-A: A valid certificate by a qualified Veterinary Officer to the effect that the cattle are in a fit condition to travel by rail or road and are not suffering from any infectious or contagious or parasitic disease and that they have been vaccinated against rinder pest and any other infectious or contagious or parasitic diseases ,shall accompany each consignment .

47(b)In the absence of such a certificate,the carrier shall refuse to accept the consignment for transport.

47(c) The certificate shall be in the form specified in Schedule-E.

Rule-48:Veterinary First Aid equipment shall accompany all batches of cattle.

Rule-50:The average space provided per cattle in Railway wagon or vehicle shall not be less than two square metres.

Rule-54(1): Watering arrangements on route shall be made and sufficient quantity of water shall be carried for emergency.

Rule-54(2) Sufficient feed and fodder with adequate reserve shall be carried to last during the journey.

According to Rule-54(3) Adequate ventilation shall be ensured.

(20)With the above provisions of Animal Preservation Act,1954 and Gujarat Animal Preservation Act,2011 and Rules for transportation of animals,1978 and Sections -11(1) D,E,F,H of Animal Cruelty Act,1960 and Section-125 (E) of Central Motor Vehicle (11th the

Amendment) Act,2015 the complaint of the plaintiff was registered.Looking to the facts of the prosecution and the evidence submittedthe accused was found transporting the animals in the muddamaal vehicle without the certificate of the competent authority or any other legal pass or permit.Moreover,no certificate of competent officer was produced in police investigation or during trial from the defence side for transportation of offspring of cow.Therefore it is proved that in the muddamaal vehicle transportation of offspring of cow was being done illegally and in violation of the rules.Moreover,looking to the evidence submitted 12 cows and 4 bullocks were being taken in a single vehicle. In view of this, as per the rule-50 for transportation of animals ,1978 the space required was not provided .Therefore the fact can be believed that the animals were fastened tightly and were so tied as to causecruelty to them. Looking to the evidence submitted fromthr prosecution side the fact is proved that these animals were tied with ropes.

(21)Looking to the evidence submitted by the prosecution in totality and the cross-examination by the defence side the accused as stated in plaintiff's complaint it is proved that the accused was found in the muddamaal vehicle with the offspring of cow . It is also proved from the evidence submitted from the prosecutionside that the accused was driving the vehicle at the time of

theincident.Thus the accused was found in direct possession of the offspring of cow which were being transported in the muddamaal vehicle . During the vehicle checking the accused by eluding the observation of the police and taking advantage of the darkness left the muddamaal on site and fled away.This fact is proved by the oral evidence of the plaintiff.In this case the accused is charged with illegal transportation of the offspring of cow .At the time of the incident from the muddamaal vehicle cows and bullocks were found. Its price comes to Rs.1,60,000

as mentioned in the complaint. There is no reason for the police employees to show the animals of such a big amount wrongly and file a false case. Moreover the vehicle in which the animals were being transported has been taken into custody and its price is mentioned as rupees five lac. Looking to this also one can't believe that the police has registered a false case. In this matter the prosecution the police employee who had registered complaint his evidence has also been submitted. Looking to which no animosity or malice has been brought on record by the defence. In the circumstances the oral evidence of the plaintiff has been submitted which is free from doubt.

The defence has not been able to bring on record any facts so as to give convincing reason to doubt about the evidence. I believe that the evidences submitted by the plaintiff prove the case against the accused without any doubt.

(22) Looking to the evidence submitted by the plaintiff when the vehicle under the possession of the accused was stopped at that time it was packed with the offspring of cows. Moreover the fact of violation of the transportation of milch cattle has also come on record as per Order of Agriculture and Co-operation Department dated 22/10/2013 No:LVS/10/2010/4992/P.1. Moreover the accused did not possess Government permission or certificate of the competent authority for transportation nor it is submitted. Nor was such ' permit or certificate produced during trial. During the special statement as per Section 313 of Criminal Procedure Code no permission obtained from Government or Certificate from the Competent Authority was produced as basis or evidence from the defence side. Moreover at the time of the incident the accused did not produce Certificate of the Competent Authority or permission of the Government nor did he bring such fact on record. Thus looking to the whole record of the case the fact that the accused did not possess the certificate of the competent authority or permission from Government for transportation of the offspring of cow is proved beyond doubt.

(23)As per rule -46 of The rules of transportation of animals,1978 rules 47,48,50 and rule 54(1) and (2) are applicable while transporting the offspring of cows in motor vehicles.The accused of this matter has transported animals-offspring of cows - without the certificate prescribed under rule 47(c).It has caused unnecessary pain and suffering to the animals .Moreover he did n't keep the animals in the vehicle of required height,length and breadth to give them enough space for movement or by keeping them confined he has violated the provisions of the law.This fact is proved from the evidence submitted before the court.Moreover the accused has neither stated such facts in his special statement nor has he submitted it in the evidence of his defence.Thus in this matter the said rules 47,48,50 and 54(1) and(2) have been violated.Therefore the accused has committed criminal act as per section -11(d),11(e) and 11(h) of Animal Cruelty Act ,1960.This fact is proved.

(24) Looking to the evidence submitted by the prosecution side the accused at the time of the incident was ' transporting cow's offspring in the muddamaal truck .Therefore it is natural that it took much time in reaching the site of crime. If the journey is of long distance then the animals should be caused to get down and allow them to take rest after some time.The accused should make arrangements for feed,fodder and water.Moreover, these animals during transportation were tied with rope and this fact is proved from the evidence which came on record. During the transportation the animals were rested or arrangement for food and feed and water was done no facts could be brought on record by the accused in this regard during the trial .Therefore the accused has committed criminal act as per section -11 (f) and 11(h) of Cruelty to Animals Act,1960. This fact is proved.Moreover as per the evidence submitted by prosecution the fact is stated that the animals were loaded in the vehicle and were fastened with the

rope .Moreover looking to this , the fact is proved that the accused had treated the offsprings of cow with cruelty.

(25)Moreover the evidence submitted by the prosecution and the facts which came on record during the trial of the crime viewed in totality at the time of incident the accused in the muddamaal vehicle did not hold the certificate of the competent authority or the written permit for transportatio of the animals and has failed to produce it. In the circumstances looking to the amendment made in in Gujarat Animal Preservation Act,1954 and section -6(a) of the Amended Act,2011 the transportation of the offsprings of cow is prohibited for slaughter .Moreover there is a provision for presuming in the Act. In the present case the prosecution side has succeeded in proving that the accused did not hold the certificate of the competent authority or written permit for its transportation the court has to presume the law and it has to believe that the accused was transporting the animals,offsprings of cow ,for slaughter. As the prosecution has proved that the accused was transporting the animals,offsprings of cow, against the provisions of law and rules thereafter the law has in Section -6 (a) imposed the responsibility of proving the facts contrary to the presumption on the shoulders of the accused.The accused has failed to prove this fact contrary to the presumption .Therefore, the fact that the accused was transporting,animals,the offspring of the cow, for slaughter in the motor vehicle is proved from the evidence submitted by the prosecution and the presumption of the law.

(26)According to rule-50 of Rules for transportation of Animals,1978 and Section -125 E of the Central Motor Vehicles (11 th Amendment)Act when the animals are transported from the road route then in the motor vehicle two square metres of space should be kept for each animal.But in this case , the fact has come on record that the accused was transporting the animals,offsprings of cow , bullocks and cows .through road

route .Even if it is taken into consideration that the length and breadth of the muddamaal vehicle is according to law then also considering the area of the rearside of the muddamaal vehicle 12 cows and 4 bullocks can't be transported.The prosecution side has proved the fact without doubt that the accused has not observed the rules.Moreover it may also be said that this act of the accused is tantamount to cruelty to animals.The rules provide for keeping 2 square metres of space for every animal so that they do not have to feel pain and suffering. But the elements engaged in such type of criminal activity do not observe the rules made for wellbeing and welfare of the animals and therefore invite criminal action.

(27)Reading the provisions of section -125(e)of the Central Motor Vehicles (11 thAmendment)Act, the space in the vehicle shall not be less than two (2) squaremetres average space for each animal .This provision has been violated in this case.

(28) Central Government has formulated rules relating to the transport of animals under the power bestowed on it by The prevention of cruelty to animals Act,1960. The accused has violated rules 47,48,50and54(1) and(2) of these rules and has also violated section -125 (e) of the Central Motor Vehicle (11 th Amendment),2015 .According to which under section-38(3) of the prevention of cruelty to Animals Act,1960 there is provision for fine upto rupees one hundred or jail for three months or both .

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(29)According to the case of prosecution the fact is proved that the accused has done the acts imputed to him through transporting the animals,offspring of cow, in the muddamaal vehicle ..The fact is proved that the muddamaal vehicle was used for transporting the offsprings of the cow illegally and against the rules .In these circumstances as per the provisions of Gujarat

Animal Preservation (Amendment) Act, 2017 the muddamaal vehicle is fit to be confiscated and vested in Government. Moreover, reading section -3 of The prevention of cruelty to animal act,1960 the accused held the custody/possession of the animals at the time of the incident. It was the duty of the accused to take all reasonable steps for the wellbeing of the animals. It was his duty that unnecessary pain or suffering is not caused to the animals. Despite this the accused failed in discharging his duty according to law and rules and he has committed cruelty to dumb animals. Moreover he did not make arrangements for feed or fodder and water and the animals were being transported in a space much less than specified in the rules. Separate partitions were not erected for each animal in the vehicle and these were tied with ropes. Since this fact is proved the custody of animals can't be entrusted to the accused. Moreover during the trial of the crime no documentary evidence was produced to prove that he was the owner of the muddamaal animals. When the owner of the animals is held responsible for committing cruelty upon them then those animals are given to the custody of the government as per section - 29 of prevention of cruelty to animals act,1960. During the trial of this crime, the fact that the animals were owned by the accused was not proved hence the animals were entrusted to the cattle pound as per the order of the special(?) magistrate court. The order being in the interest of the animals, it should be confirmed. And I come to the decision that the custody of animals should not be entrusted to the accused.

(30) Thus at the end of the whole discussion I believe that the prosecution has been able to prove all the imputations of the chargesheet filed against the accused. Therefore the accused is held guilty for the offences proved. Therefore, the decision is postponed to give hearing to the accused about the punishment. This judgment is read out in the open court on 4 th day of Month November,2022 and declared.

Date:04/11/2022. Samir Vinod
chandra Vyas
Sessio Judge,

Tapi at Vyara

Code:GJ-00345

Place:Vyara

(D.M.Kuriya)

(31) The accused was heard in person about the punishment. Learned advocate of the accused is present .The accused has represented that he is unmarried,his parents have expired.The accused has a younger sister and the responsibility of her maintenance is on his shoulders. He has no criminal antecedents orpast.Hehas,therefore,represented for minimum punishment/sentence.

(32) The learned Special Public Prosecutor has resigned long time ago.Thereafter Government has not appointed Special Public Prosecutor. The accused is in the judicial custody since long time. In these circumstances the Special Public Prosecutor for the Prosecution side could not be heard.

(33)Considering the entire representation of the accused in the opinion of this court the accused has transported the dumb animals,offspring of cow,.The accused had not obtained the certificate from the competent authority or written permit for transportation of animals, offspring of cow.Therefore the court has to presume the law. And the court has to presume that the accused was transporting theanimals,offspring of cows for slaughter. The

responsibility of proving the fact, which the law has placed on the accused in Section -6(a) he has failed in proving it in this case. Therefore it is proved that the accused was transporting the animals, offspring of cow, in his motor vehicle for slaughter. This criminal activity can't be taken or viewed lightly.

After consideration of the point of punishment this court comes to the conclusion that if the accused is ordered to be given the maximum punishment and the fine the objective of the law will be served /maintained. Therefore, final order is issued as under:

-:Order:-

(1) The accused Mohammed Aameen Arif ,Anjum ,resident of Mangal yard ,Yaseenmiyan Gali(lane), Taluka-Malegaon, District-Nasik(Maharashtra) is held guilty under section -5,6,7 of Gujarat Animal Preservation Act,2011 and Section-11 (1) (d),(e), (f),(h) of the Prevention of Cruelty to Animals Act-1960 and section-2 of Gujarat Control of Animal Transportation Order ,1975 and Section-4 of Gujarat essential commodities and animal control Act,2015 as well as section-125 (e) of Central Motor Vehicle (11 th Amendment)Act,2015.

(2) For violation of sections- 5,6,7 of Gujarat Animal Preservation Act,1954 read with Gujarat Animal Preservation Act,2011 and for violation of Section-6 (a)(1) of Gujarat Animal Preservation (Amendment)Act ,2017 and Section-8(2) of Gujarat Animal Preservation (Amendment) 2017 rigorous punishment to life and a fine of Rs.500,000,(rupees five lacs) is hereby imposed. If the accused fails to pay the fine, he will have to undergo rigorous punishment of five more years.

(3) The accused is held guilty for violation of section -11(1)(d) of Prevention of Cruelty to Animals Act,1960 and sentenced to a fine of Rs.50/-(Rupees Fifty).And if the accused fails to pay the fine then he will have to undergo the sentence of simple jail of 2 (two) months .

(4)The accused is held guilty of violation of section11(1)(d) of the prevention of cruelty to animalsAct read with section -125 (e) of Central Motor Vehicle (11 th Amendment)2015 read with violation of section -50 of Animal Transportation Rules,1978 and Section -38(3) of Prevention of cruelty to Animals Act, 1960 is sentenced to simple imprisonment of three months and fine of Rs.100/- (Rupees one hundred).If the accused fails to pay the fine then he is ordered to undergo simple imprisonment of 15 (fifteen) days.

(5) The accused is ordered

to pay the fine of Rs.50/-

(rupees fifty)for violation of

section -11 (f) of the prevention of Cruelty to Animals Act,1960.If he fails to pay the fine then he is ordered to undergo simple imprisonment for 2(two) months.

(6) The accused is held guilty of violation of section -11 (1) (h) of Prevention of Cruelty toAnimals read with section 54(1) and (2) of Animal transportation Rules , 1978 and section 38(3) of Prevention of Cruelty to Animals Act ,1960.He is ordered to undergo simple imprisonment for 3 (three) months.If he fails to pay the fine then he is ordered to undergo simple sentence of 15 (fifteen) days.

(7) The accused is held guilty of the violation of section-4 of Gujarat essential commodities and animal control Act,20005 and under section -9 of the said act he is ordered to one year's simple sentence and fine of Rs.100/- (Rupees one hundred).If the

accused fails to pay the fine then he shall have to undergo simple sentence of 15 (Fifteen) days.

(8) The accused is not given separate sentence under section -2 of Gujarat State Transportation Control Order,1975.

(9) The muddamaal vehicle Tata's truck no.M.H.-04-F.P.-6936 is ordered to be vested in the Government after the expiry of time for appeal in accordance with section-6 (a)(4) of the Animal Preservation (Amendment)Act, 2017.A copy of this decision shall be sent to Police Sub-Inspector of Nizar Police Station for implementation.

(10)As per section-29 of Prevention of Cruelty to Animals Act, 1960 muddamaal cows and bullocks have been ordered to be sent to Cattlepound by the Magistrate Court which is confirmed.

(11) As per Section -31 of Criminal Procedure Code the sentence of the accused will run concurrently.

(12)The accused shall be given the benefit of set off as per section -428 of Criminal Procedure Code .

(13).A true copy of this order shall be given to the accused free of cost.

(14.) A copy of this order shall be sent to the District Magistrate ,Vyara by e-mail.

Order read out and declared on 4th Day of November Month in the year 2022 .

Date:04/11/2022. Samir Vinodchandra Vyas

Sessions Judge, Tapi ,at
:Vyara

Code:GJ-00345
(D.M.Kuriya)