

Delhi District Court

Arif Qureshi vs Wild Life Inspector on 1 October, 2015

Author: Sh. Sanjay I

IN THE COURT OF SANJAY GARG-I : SPECIAL JUDGE-IV,
(PC ACT) CBI: DELHI.

CA No. 11/2015

ID No: 02401R0331392015

Arif Qureshi

s/o Sharif Qureshi

R/o Lall Bazar, Qureshi Mohalla,

Sri Nagar, J&K 190 011

...

Appellant

Versus

Wild Life Inspector,

Wild Life Preservation (NR)

M/o Environment & Forests,

Wild Life Crime Control Bureau

2nd Floor, Tirkoot-1, Bikaji Cama Place,

New Delhi 110066.

....

Respondent

Date of Institution: 01.07.2015.

Date of Arguments: 24.09.2015.

Date of Judgment: 01.10.2015.

JUDGMENT

1.This appeal is directed against judgment dated 02.06.2015 of Ld ACMM (Spl. Acts), Central, Tis Hazari vide which appellant/accused was held guilty for offences under Sections 44/49 and 49B(1) of Wild Life (Protection) Act (hereinafter referred to as "the Act"). Vide order on sentence dated 03.06.2015, accused was sentenced to undergo SI for one year for offence punishable under Section 51 of the Act along with fine of Rs. 5,000/-, in default SI for one week.

CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 1 of 12

2.Brief facts of the case are that Wild Life Inspector Aarti Singh filed a complaint dated 30.10.2002 stating that she is working as Wild Life Inspector in the office of Deputy Director Wildlife Preservation, Northern Region, Ministry of Environment & Forests, New Delhi. On receipt of information that one person namely Arif Qureshi is dealing/selling shahtoosh shawls at shop no. 41, Delhi Hatt, opposite INA, a raid was organized on 18.11.1996 and five shahtoosh shawls were recovered from the said shop. Accused was present in the shop and he was dealing in shahtoosh shawls. On demand he could not produce any document, certificate/licence required to deal in

shahtoosh shawls. The 5 shahtoosh shawls were seized by Wild Life Inspector. An application under Section 50(4) of the Act was filed by inspector R. V. Singh before the court of Ld. CMM for keeping seized property under custody. On 10.02.1997, accused was granted bail. Accused is stated to have committed offence under Section 42(2), 49, 49(B)(i)(C) read with Section 39 punishable under Section 51 of the Act. Then Wild Life Inspector died on 21.03.2002 and this complaint is filed by Inspector Aarti Singh in discharge of her official duties.

3. Accused was summoned by Ld. trial court after pre-charge evidence, charge was framed against him for commission of offence under Sections 39/40(2)/44/49 and 49B(1) of the Act to which he pleaded not guilty and claimed trial.

4. Complainant examined 3 witnesses to prove its case. PW-1 Rahul Dutta, consultant at Traffic India; PW-2 K. N. Singh, retd. Assistant Director, WCCB(NR), Govt. of India, Ministry of Environment & Forests and PW 3 Aarti Singh, Wild Life Inspector, who is complainant in this case. In his statement recorded under Section CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 2 of 12 313 Cr.P.C. accused denied all evidence against him and took the defence of false implication in this case.

5. Heard arguments. Sh. Anil Kumar Khaware, Ld. counsel for appellant addressed arguments and Ms. Rattan Bhatnagar, Ld. counsel and Director Wild Life Crime Control Bureau Sh. Nishant Verma addressed arguments on behalf of respondent. Perused the various grounds of appeal raised and trial court record.

6. Ld. counsel for appellant has submitted that Ld. CMM has failed to appreciate that shahtoosh shawls Ex.P-1 to P-5 does not bear signatures of the accused and prosecution has failed to establish that who had put the signatures on Ex. P-1 to P-5. It has been stated that appellant used to sign in English. He has signed the seizure memo Ex. PW 1/1 in English but Ex. P-1 to P-5 are stated to bearing signature of the accused done in Urdu. It has been stated that seizure memo Ex. PW 1/1 was got signed when it was a blank paper and subsequently seizure memo was drawn on it. It has been urged that as per Section 50(4) of the Act, accused and case property was to be produced before the court forthwith but case property was only produced before the court on 20.11.1996 and this delay remained unexplained by the prosecution. It has been further submitted that prosecution has failed to establish that accused was licensee or tenant of shop no. 41 of Delhi Hatt from where he is alleged to be selling or found in possession of shahtoosh shawls. It has been argued that prosecution has failed to examine independent public witness despite the spot being the public place and there is no opinion of the expert that the seized article Ex. P-1 to P-5 were shahtoosh shawls. It has been submitted that there are contradictions in the statement of PW-1 and PW-2 regarding the time CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 3 of 12 when accused was apprehended but trial court has failed to appreciate the same. It has been argued that the trial court has wrongly refused to consider the defence taken by the accused that on 18.11.1996 he had gone to Safdarjang Hospital to see his wife, on the way he went to Delhi Hatt for casual visit where he saw that some persons were quarreling in front of one shop. He went there, where he saw that some persons were tying up things and thereafter 5-6 Kashmiri persons along with him were taken to their office. In the office those persons kept 5 shahtoosh shawls and returned the remaining articles to Kashmir people

and he was falsely implicated in this case. In support of his submissions, Ld. counsel for appellant has relied upon the following judgments:-

(i) Mohd. Ishaq Baig Vs. State 2009(2) JCC 991(Del);

(ii) State of Kerala Vs. Odiase Austin Goubadia [Crl. Appeal no.

605/2014 with Crl. Appeal No. 673/2015 decided by Kerala High Court on 25.11.2014];

(iii) Prithvi Pal Singh Vs. State (Delhi High Court) [84(2000)DLT 464]; &

(iv) Rang Behadur Singh & ors. Vs. State of UP [2000 II AD (SC) 103]

7. On the other hand, Ld. counsel for the respondent submitted that Wild Life Inspector who headed this search has died and due to this reason, complaint was filed by other inspector, i.e. PW-3. It has been stated that statements of PW-1 who is an independent witness and PW-2 who was one of the member of the search party are consistent on all the material aspect of the case and contradiction pointed out by Ld. counsel for accused are negligible. It has been stated that recovery of 5 shahtoosh shawls stands proved from the possession of the accused and under Section 57 of the Act, there is presumption CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 4 of 12 in favour of the prosecution and against the accused and accused has failed to rebut this presumption. It has been further submitted that Wild Life Inspector and other officials of the department who conducted this search are well trained officials and even if seized shahtoosh shawls were not sent for any expert opinion, witnesses examined during trial have specifically stated that the seized articles, Ex. P-1 to P-5 are shahtoosh shawls.

8. To prove this recovery, prosecution has examined 2 witnesses. PW-1 stated to be an independent public witness and PW-2 is stated to be one of the member of the search party and was posted as Wild Life Inspector at that time. Wild Life Inspector R. V. Singh who was heading this search is reported to have died, hence, this complaint has been filed by PW-3 Aarti Singh, Wild Life Inspector.

9. PW-2 has deposed that on 18.11.1996 information was received by Inspt. R. V. Singh that one person namely Arrif Qureshi is dealing in Wild Life items at INA market in Delhi Hatt at shop no. 41. Accordingly PW-1 of WWF was joined as a raiding party member. PW-1 reached Delhi Hatt around 11.15 AM and he along with his colleague Rajvir Singh reached there at 11.40 AM. They reached at shop no. 41 as a decoy customer and asked the person present there to show fine woolen shawls. The person showed several shawls out of which they found some to be shahtoosh shawls. They disclosed their identity and the name of the person disclosed was Arif Qureshi resident of Lal Bazaar, Mohalla Qureshi Sri Nagar, J&K. Thereafter, search of the shop was done and 5 shahtoosh shawls were recovered. Accused did not produce any authority or certificate to possess these shawls, hence, the same were seized by Wild Life Inspector Rajvir Singh under Section 50 of the Act. He identified his CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 5 of 12 signature on the seizure memo Ex. PW 1/1. He also identified shahtoosh shawls as Ex. P-1 to P-5 as the same which

were recovered from the possession of the accused. During cross-examination, this witness has stated that late R. V. Singh has signed on Ex. P-1 to P-5 but he does not remember if accused had put signature on exhibits. He stated that there is one signature on Ex. P-1 to P-5 which is in Urdu. He further stated that he cannot say as to who is owner of shop no. 41 but accused was present there and offered Ex. P-1 to P-5 for sale.

10. PW-1 Sh. Rahul Dutta has broadly supported the statement made by PW-2. He deposed that he was working as consultant at Traffic India which is a division of WWF India 172B, Lodhi Estate, New Delhi, at the time of this incident. During his cross-examination, he has stated that he is not aware whether accused was owner or tenant. He further stated that no signatures were obtained on the shahtoosh shawls of accused before sealing the same.

11. PW-3 Aarti Singh is the complainant as she has filed the complaint as Sh. R. V. Singh Wild Life Inspector who conducted this search died on 21.3.2002. She proved complaint Ex. PW 1/A.

CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 6 of 12

12. One of the contentions raised by Ld. counsel for the appellant is that there are contradictions in the statement of PW-1 and PW-2 and no independent public witness was joined at the time of search. Ld. counsel has pointed out that as per PW-1 they reached near INA at 01.00 PM on 18.11.1996 but as per PW-2, PW-1 had reached Delhi Hatt at 11.30 AM and he along with his colleagues reached there at 11.40 AM. The other contradiction pointed out by Ld. counsel is that as per PW-1 accused had initially shown them one shahtoosh shawl and thereafter shown them 4 more shahtoosh shawls. But as per PW-2 accused had shown some shahtoosh shawls and thereafter in thorough search of the said shop 5 shahtoosh shawls were recovered. As urged by Ld. counsel for accused that these are major contradictions which go to the root of the matter and shake their credibility as prosecution witness and entire case comes under shadow of doubt. To my mind, these are minor contradictions which cannot be said to go to the root of the matter shaking the credibility of these witnesses. It has to be appreciated that these witnesses were examined after 13-15 years of the alleged seizure. It is not possible for a person to remember minute particulars of an incident and one tends to forget the minor details with the passage of time. The Ld. trial court has rightly relied upon the observations of the Apex court in *Bharwada Boginbhai Hijri Bhai Vs. State of Gujrat*, [1983 Crl. L.J. 1096] where the court has observed that minor discrepancies occurring in the deposition of the witness does not shake the prosecution case in any manner.

13. Other contradictions pointed out by Ld. counsel for the appellant is that despite easy availability, no public witness was joined to the reasons best known to the search team. As per prosecution, PW-1 is CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 7 of 12 an independent witness and he has supported the prosecution version of the incident. But as per the accused, PW-1 is not an independent witness as PW-3 while deposing as CW-1 in pre-charge evidence has admitted that PW-1 was employee of WWF, department of Union of India. Prosecution department, i.e. Wild Life Preservation (NR) is department under Ministry of Environment & Forest, Union of India and that WWF India is sister concern of Wildlife Department of Union of India. PW-1 was working as consultant Traffic India which is a division of WWF India, 172B, Lodhi Estate, New Delhi. As

pointed out by Ld. counsel for accused even in her pre-charge evidence as CW-1, PW-3 has denied the suggestion that WWF India is sister concern of Wild Life Department of Union of India, therefore, I find no substance in this contention raised on behalf of accused. Admittedly by prosecution, the seized shahtoosh shawls were produced before Ld. ACMM on 20.11.1996 and after detaining accused on 18.11.1996, he was released on bail. Ld. counsel for accused has contended that offence with which accused is punished is having maximum punishment of 3 years and the offence is non-bailable but since accused was allowed to go this proves that he was not one of the Kashmiri persons from whom these shawls were recovered. Sh. Nishant Verma, Director of the prosecuting department has submitted that Section 53 gives discretion. Department releases the person detained if detaining officer is satisfied that the person detained will duly answer the summons or other proceedings initiated against him.

14. What were the reasons for that the accused was allowed to go after being detained on 18.11.1996? I am not adverting to decide the contention raised by Ld. counsel for accused if offence with which accused is charged for is bailable or non-bailable. As pointed out by CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 8 of 12 Director of prosecuting department Section 57(3) of the Act provides some discretion to the arresting officer if he satisfy with his name, address etc. of the arrested person. Section 50(4) mandates that the person detained or things seized shall forthwith be taken before the Magistrate to be dealt according to law. As per the evidence on record, the seized shahtoosh shawls were produced before the Ld. ACMM on 20.11.1996, I, therefore, find no defect in the manner in which investigation proceeded after this search, recovery and detention of the accused. Moreover, if there occurs any lacuna on the part of Wild Life Inspector who headed this search, the same being procedural defect, cannot be held to affect the recovery vide seizure memo Ex. PW 1/1.

15. Other important contention raised by Ld. counsel for accused is there is no expert opinion that article alleged to be seized from possession of the accused was shahtoosh shawls. He further submitted that prosecution has failed to establish if signature appearing in Urdu on Ex. P-1 to P-5 are of accused as admitted, as admittedly accused signed in English on Ex. PW 1/1. Regarding one signature in Urdu which is appearing on Ex. P-1 to P-5, PW-2 has stated that he does not recollect whether accused had put his signature on the exhibits but he has admitted that there is one signature appearing on exhibits apart from Inspector R. V. Singh and the same is in Urdu. PW-1 has specifically stated that no signature was obtained on the exhibits of the case before sealing the same. Admittedly by prosecution seizure memo Ex. PW 1/1 bears signature of accused, which is in English at point "C". If accused has signed seizure memo in English then why he would have signed the exhibits in Urdu, no evidence or explanation to this affect has come from the prosecution. Moreover, it is not the case of the prosecution if any CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 9 of 12 other person was present at the time of search and preparing seizure memo, in addition to members of the search party and accused whose signature were taken on the exhibits.

16. Regarding expert opinion that exhibits P-1 to P-5 are shahtoosh shawls, contention raised by Ld. counsel for respondent is that officials of the department were trained and were able to discern shahtoosh shawls from the other shawls. It has been exhibits were identified and declared shahtoosh shawls by the then Wild Life Inspector (late R. V. Singh) on the basis of training and expertise in the

filed of identification of wild life articles/contrabands. It has been further stated that Wild Life Inspector are regularly preparing identification reports with regard to wild life articles/contrabands which are referred to Wild Life Preservation Officer by Custom Officers which are coming for export/import at the exist points. It has been further stated that this is one of the mandated task being carried out by Wild Life Preservation Officer as per Section 38(Y)&(Z) as mentioned in annexure.

17. Ld. counsel for appellant has relied upon the observations of Hon'ble High Court in Mohd. Ishaq Baig (supra). In this case, Wild Life Inspector has seized 159 shawls stated to be made of wool derived from Tibetan Antelopes in different ratio to the other wool. The seized shawls were sent to Wild Life Institute of India (Institute), Dehradun for scientific analysis. The institute sent its report confirming that out of 159 shawls 10 contained guard hair/fibers of the shahtoos variety of Tibetan Antelopes. While examining the scientist of the institute who had given this report, the trial court observed that the report given by institute is cryptic and shorn of necessary details. The trial court directed the Director, Wild Life CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 10 of 12 Institute, Dehradun to appear and explain why such cryptic reports are being sent and further directing to produce report if any by scientific expert to the Director. Against this order of trial court accused has filed a petition under Section 482 Cr.P.c. but the same was dismissed by the High Court.

18. It is clear from the facts of this case that there exists Wild Life Institute, at Dehradun. The report of scientist of the institute or any other expert body on this subject, regarding exhibits in this case, i.e., five shawls, alleged to be made of hair/fiber of shahtoosh, variety of Tibetan Antelopes, was must. This case appears to be *pari materia* to the cases regarding recovery of contrabands in Arms Act and NDPS Act. Even in these cases it is the report of expert which establish that contraband recovered was either covered under Arms Act or under NDPS Act.

19. Ld. Trial court has dealt with this issue by observing that PW-2 has clearly stated that all 5 recovered shawls are made of or derived from Tibetan Antelope/Chiru's wool which is a scheduled animal specified under Schedule-I of the Act; as per sub-section 8(d) of Section 50 of the Evidence Act, any evidence recorded by Wildlife Officer will be admissible in evidence and embargo contained under Section 25 of the Act is not applicable to it.

20. Section 50 sub-section 8(d) and Section 9 of the Act provides that any evidence recorded by Wild Life Officer shall be admissible in any subsequent trial before the Magistrate provided that it has been taken in the presence of the accused persons. No doubt seizure memo Ex. PW 1/1 admittedly bears signature of accused and there is mentioning of recovery of Shahtoosh shawls in it but from the CA No. 11/2015 Arif Qureshi Vs. Wild Life Inspector Page 11 of 12 memo only recovery of shawls from possession of accused stands proved but whether these shawls were contraband being of shahtoosh, to establish that opinion of expert was required.

21. In view of the forgoing reasons, in my considered view, in absence of the report of expert, prosecution is said to have failed to establish that P-1 to P-5 were contraband to be made of hair/wool of shahtoosh variety of Tibetan antelope. Accordingly, the appeal is accepted. The impugned judgment and order on the point of sentence is set aside. Appellant accused is directed to furnish

personal bond in the sum of Rs. 20,000/- with one surety in the like amount under Section 437-A Cr.P.C.

22. The trial court record along with copy of this judgment be sent back.

23. The appeal file be consigned to record room.

Announced in open court
on 1st day of October, 2015

(SANJAY GARG-I)
SPECIAL JUDGE-IV, CBI (PC Act)
TIS HAZARI

COURTS, DELHI