

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Misc.-A No.20-MA of 2015(O&M)

Date of Decision: March 3 , 2015.

State of Haryana

..... APPELLANT (s)

Versus

Lalchi @ Jaanbaz and another

..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Vishal Garg, Addl.A.G., Haryana
for the appellant-State.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

State of Haryana has preferred the present appeal impugning judgment dated 22.09.2014 passed by the learned Additional Sessions Judge, Karnal whereby respondents-accused, Lalchi @ Jaanbaz and Saddham @ Sabudin have been acquitted of the charge for commission of offences punishable under Section 395 IPC and Section 25 of the Arms Act.

Brief facts are that FIR No.185 dated 14.02.2013 under Sections 395 IPC and Section 25 of the Arms Act (Ex.P3) at police station Karnal City stood registered on the basis of an application (Ex.P1) moved by complainant, Narinder Singh Lather.

As per the prosecution version, PW8 Narinder Singh Lather was

running a dairy at the back side of Poshak Feed Factory having 80 cows and buffaloes looked after by four servants. The servants were residing on the premises alongwith their families. It is alleged that on 14.02.2013 when he came to the dairy in the morning to fetch milk, he found some of the buffaloes missing from the shed. He discovered his servants Rishi Pal, Krishan, Mahinder, Rizwan and Rizwan's wife Seema with their hands tied up. They told him that on the intervening night of 13/14.02.2013 at about 1.00 a.m. at night, 23-25 unknown young boys came there and woke them up. One of them was armed with country made pistol, another with a knife and the remaining accused were armed with sticks (Dandas) and cudgels (Bindas). Krishan revealed that he and Rizwan were confined in a room at pistol point. Their hands were tied. 28 buffaloes were alleged to be missing. It was stated that unknown persons had committed theft of his buffaloes. On the basis of complaint (Ex.P1), FIR (Ex.P3) was registered. Investigation into the matter was commenced. Rough site plan (Ex.P14) of the alleged place of occurrence was prepared.

On receiving secret information, 13 buffaloes were recovered on 14.02.2013, tied to trees near the Gogripur railway crossing in the area of village Bazida. Complainant identified the said 13 buffaloes to be his own. They were taken in possession vide memo (Ex.P7). buffaloes were released on Superdari to the complainant at the spot vide memo Ex.P16.

On 10.03.2013, secret information was received by ASI Surinder Kumar (PW3) that certain criminals of village Mandia District Meerut were wandering about in the area of village Mangalora in order to commit theft of buffaloes and can be nabbed red handed. A Naka was arranged in the area and

two persons coming from the side of village Mangalora on being identified by the informer were apprehended. The said persons revealed their identities as Lalchi and Saddham i.e., the respondents-accused. Disclosure statements were suffered by them admitting the commission of offence in the present case. They resiled from the said disclosure statements on 11.03.2013 and suffered subsequent disclosure statements. Yet again, subsequent disclosure statements were also retracted and separate disclosure statements (Ex.P4 and P5) were suffered by them on 17.03.2013. It was disclosed that they alongwith Irshad, Mukram and son of Lalchi hired two canters from Meerut and came to Karnal. Near New Grain Market Karnal, Saddam was asked to look after the Canter whereas, remaining accused entered the dairy. Four persons and a woman were sleeping in a room. They were tied up at gun point. 28 buffaloes were taken from the dairy but only 15 could be taken away to Meerut, as one of the Canter went out of order. Irshad and Alishan were allegedly armed with pistols and respondent No.1, Lalchi with a knife. They went to Meerut alongwith 15 buffaloes in the said Canter. Four buffaloes came to the share of respondent No.1, Lalchi. Respondent No.1 – Lalchi allegedly got recovered four buffaloes pursuant to his disclosure statement from the Gher (a vacant plot) of Sheri, adjacent to his residence in U.P. Said buffaloes were identified by the complainant and released on superdari in his favour vide Memo Ex.P11. He also got recovered a knife from the western berm of village Banghar which was taken in possession vide memo Ex.P8. Rough site plan of the place of recovery of knife and of the buffaloes were prepared vide memo Ex.P12 and Ex.P13, respectively. Place of theft at New Grain Market, Karnal as well as the place

where buffaloes were loaded in a tempo were got demarcated by both the accused persons (Ex.P10 and Ex.P9 respectively).

Charge/report under Section 173 Cr.P.C. was submitted in court on completion of investigation. The respondents-accused were charged for commission of the offences punishable under Section 395 IPC and Section 25 of the Arms Act. They pleaded innocence and claimed trial.

Prosecution examined as many as eight witnesses to prove its case.

Accused pleaded false implication in the statements recorded under Section 313 Cr.P.C. No witnesses were examined in defence. However, Ex.D1 to D3 were produced by the respondents-accused. Ex.D1 is an application dated 24.02.2013 submitted by Smt. Aamna, wife of respondent No.1 – Lalchi, to the Senior Superintendent of Police, Meerut. Ex.D2 is an application filed by her under Section 57 Cr.P.C. on 07.03.2013 before the Chief Judicial Magistrate, Karnal for a direction to the Incharge, CIA Staff Karnal to release her husband Lalchi. Reply Ex.D3 was filed by the Incharge, CIA Staff Karnal on 08.03.2013 that respondent No.1-accused, Lalchi was neither in their custody nor arrested in any case. Respondents-accused were arrested on 10.03.2013 by the police in this case.

Learned trial court on appreciation of evidence and keeping in view the facts and circumstances of the case, acquitted both the accused persons vide impugned judgment dated 22.09.2014.

Aggrieved therefrom, State of Haryana has preferred the instant appeal impugning the abovesaid judgment.

Learned counsel for the State vehemently argues that prosecution has

proved its case beyond reasonable doubt. Trial court has proceeded on the basis of conjectures and surmises to acquit the respondents-accused whereas, there is ample evidence on record showing the commission of offences alleged.

It is submitted that PW4 Krishan son of Shri Chander, one of the servants of complainant Narinder Singh Lather, has duly supported the prosecution version. He has identified the accused persons to be two of the intruders on the fateful day.

Furthermore, an application was moved for test identification parade of the accused persons which was refused. Therefore, an adverse inference has to be drawn against the accused persons. Disclosure statements have been suffered by them pursuant to which recoveries have been effected. Respondents-accused had demarcated the place of occurrence as well as the place from where buffaloes were loaded. Therefore, there is clear and cogent evidence which points to the guilt of accused persons. It is prayed that the impugned judgment of acquittal be set aside and respondents-accused be convicted for the offences punishable under Section 395 IPC and Section 25 of the Arms Act.

We have heard learned counsel for the appellant-State and gone through the record, which has been produced in Court today.

The prosecution relies primarily on the statement of PW4 Krishan to prove the identity of the accused persons. Doubtlessly it is stated by him in his examination-in-chief that out of all the intruders two of them are present in Court. He however admits in cross-examination that he had not disclosed anything about the two intruders before the police when three or four police officials had come to the dairy alongwith three-four accused persons.

Argument of the learned counsel for appellant-State that refusal to

participate in the test-identification parade points to the guilt of the accused, cannot be accepted. It is pertinent to note that ASI Surinder Kumar (PW3) i.e., Investigating Officer of the case has not even made a mention in his testimony in respect to any application for a test identification parade. In these circumstances, it cannot be said that prosecution has proved the identity of the accused beyond reasonable doubt.

Furthermore, disclosure statements relied on by the prosecution can be of no avail for proving the guilt of respondents-accused. It is a matter of record that the accused retracted from their alleged disclosure statements not once but twice. ASI Surinder Kumar (PW3) stated that the first disclosure statement was suffered by the accused on 11.03.2013 but was retracted and they again suffered separate statements (Ex.P4 and P5) on 17.03.2013. In his cross-examination, he submits that the accused were interrogated on 11.03.2013 in the premises of CIA Staff Karnal at 8.00 a.m. They were being taken to Muradabad after taking police remand on 12.03.2013 but they resiled from their disclosure statements. On 13.03.2013 they started journey for Meerut on the basis of information given by the accused but the accused resiled from their statements again. They statedly left for Punjab on 14.03.2013 but the accused resiled from their stand at Ambala. They did not give a specific response on 15/16.03.2013, on interrogation at CIA Staff Karnal. Accused were brought from police lockup on 17.03.2013 at 6.00 a.m. and disclosure statements (Ex.P4 and P5) were recorded. No person from the public was associated at the time of alleged recovery of four buffaloes or the knife. There is nothing on record to show that the said buffaloes were marked or bore any stamp. The method or means of identification of these buffaloes by Narinder Singh Lather is a mystery.

Complainant, Narinder Singh Lather (PW8) admits that he has no photographs or means of identification of the buffaloes.

Similarly, the knife allegedly recovered on the disclosure statements of respondents-accused does not bear any stamp and the same is admitted to be easily available in the market (PW3 ASI Surinder Kumar). Therefore, it is not safe to connect the accused with the abovesaid recoveries allegedly effected from them on the basis of equally disclosure statements.

It is relevant to note that PW4 Krishan as well as PW8 Narinder Singh Lather have stated that the hands of servants were tied. It is not their case that they were gagged as well. As per PW4 Krishan, there were other persons sleeping in the nearby rooms but they did not wake up. It is highly improbable that no noise would have been raised by them in such a situation. Moving of the cattle would itself have generated sufficient noise. None of the said persons have been examined by the prosecution. The accused were apprehended on the basis of secret information. At that time, no recovery was effected from them and neither were they caught while executing theft of cattle/buffaloes.

Therefore, it would not be safe to convict the respondents-accused on the basis of the shaky and sketchy evidence as mentioned above. Prosecution has miserably failed to prove its case beyond reasonable doubt. Learned counsel for the State is unable to point out any strong compelling reasons or any perversity which would persuade us to set aside the acquittal of the respondents.

Consequently, this appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

March 3, 2015.

‘om’