

under Section 120-B of the IPC and under Sections 27 and 30 of the Indian Arms Act,1959.

2 Heard the learned APP appearing for the Applicant-State. By taking me through entire record, the learned APP argued that in paragraph 24 of impugned judgments, the learned Appellate Court came to the wrong finding to the effect that Complainant Vilas took search of the spot on 21.3.2009 whereas evidence of the P.W.1 shows that he reached Tandulwadi shiwar at 11 p.m. of 21.3.2009. According to the learned APP, as the raid was conducted in the night, panchanama at Exhibit 163 was conducted in night hours but other parts of the said premises could not be inspected. By drawing my attention to paragraph 16 of the impugned judgments and order, the learned APP argued that the learned Appellate Court gave much importance to recipients of the secret information that is, whether it was P.W.1-Vilas Shinde or P.W.3-Keskar. It is further argued that in paragraph 28 of his judgments, the learned Appellate Court gave weightage to the fact that Accused Nos.1 to 6 came to be arrested on 22.3.2009 whereas according to the case of the prosecution, they

were apprehended on 21.3.2009 at the time of raid. The learned APP argued that though these accused persons were apprehended in night hours of 21.3.2009 thereafter they were taken to the check-post and arrested subsequently on 22.3.2009. This cannot be considered as lacuna in prosecution case. By drawing my attention to paragraph 30 of the judgments of the Appellate Court, the learned APP argued that on 25.3.2009, vehicles were inspected and incriminating material was found therein and panchanama came to be prepared. Subsequently, forensic experts were called and again vehicles were inspected on 27.3.2009 by preparing panchanama. Seizure came to be effected on 27.3.2009. With this the learned APP argued that prosecution has proved offences alleged against accused persons and as such, the learned Appellate Court gave undue benefit of doubt to all accused persons and acquitted them.

3 As against this, according to the learned Advocate appearing for the Respondents/Accused in both these appeals though it is alleged that meat, horns and skin of hunted animal came to be seized at the time of the raid, evidence of the

prosecution does not show that those articles were properly sealed by applying wax seal. The learned Advocate further argued that though two four wheeler vehicles allegedly involved in the crime in question were very much available on the spot since time of the raid those were also not seized and sealed immediately in order to avoid tampering. Ultimately, they are shown to be inspected on 25.3.2009 and 27.3.2009 for effecting seizures. In submission of the learned Advocate for Respondents-Accused, there is no proper evidence to show that seized articles were properly preserved and then sent for the chemical analysis with all precautions to avoid tampering of seized articles. Apart from this, several other points were urged by the learned Advocate appearing for the Respondents-Accused including that of belated recording of statements of prosecution witnesses, non supporting the case of the prosecution by pancha witnesses, etc.

4 Respondents-Accused in both these matters are acquitted of the alleged offences by the Appellate Court. In the matter of **State of UP v. Babu** reported in **2013 ALL MR Criminal 2356**, the Hon'ble Apex Court has held that judgments of acquittal

has to be interfered only when there are compelling and substantial reasons for doing so. It is further held that if impugned judgment of acquittal is clearly unreasonable then only it needs interference. Keeping in mind this position of law, let us examine the prosecution case and the evidence adduced therein.

5 It is case of the prosecution that accused persons-respondents herein hunted a Black Bug-an animal included in the Schedule I to the Wildlife Protection Act, 1972 by indulging in criminal conspiracy. According to the prosecution case, P.W.1-Vilas Shinde, Round Officer received the secret information on 21.3.2009 that there is hunting of a black bug and accused persons are likely to take away meat thereof. Therefore, P.W.1-Vilas Shinde, Round Officer conducted raid with the help of his staff as well as two police officials. They raided the farmhouse situated in Gut No.70 of Village: Tandulwadi. They spotted two four wheeler vehicles bearing registration no.MH-06-AN 9786 and DD-03-C2447. There were stains of blood on the floor of the room in the Farmhouse. There were dishes having cooked meat thereon. Some persons were found sleeping in the room of that farmhouse.

Raiding team then took those persons found sleeping in the farmhouse in their custody. Panchanama Ex.163 came to be recorded effecting seizure from the spot. As per prosecution case, fire arms, raw meat found in the plastic bag at cattle shed of the farmhouse and half burnt skin and horns of the black bug came to be seized. This panchanama seems to have been recorded at 1.30 a.m. of 22.3.2009. Then on 22.3.2009 itself at 9 a.m. spot came to be inspected again by P.W.1-Vilas Shinde, Round Officer and by preparing panchanama at Exhibit 164, other articles such as sattur, koyta, knife came to be seized apart from the cooked meat. Routine investigation followed and other accused persons also came to be arrested on 25.3.2009. Two four wheeler vehicles found on the spot came to be inspected and those were found to be containing hair of animal and stains of blood. On 27.3.2009 by calling forensic expert named Gaikwad and his associates from the Forensic Laboratory, scrapings of blood and one bed-sheet came to be seized from those vehicles. This was done by effecting the panchanama. Seized articles were then sent for forensic examination and ultimately charge-sheet came to be filed against

accused persons.

6 In order to bring home the guilt to Accused persons, the prosecution has examined in all six witnesses. Defence of accused persons is that of total denial. The learned Trial Magistrate on conclusion of trial, after hearing the parties convicted accused persons of offences alleged against them and simultaneously they were sentenced to suffer punishment for those offences. Feeling aggrieved by that order of the learned Trial Magistrate, Accused persons preferred two appeals as indicated in opening paragraph of this judgment and the learned Appellate Court by two separate judgments in those appeals was pleased to allow those appeals on 14.5.2015 thereby acquitting accused persons of offences alleged against them.

7 Perusal of the record made available goes to show that on 22.3.2009 at about 1.30 p.m. vide panchanama at Exhibit 163 apart from fire arms, raw meat found in the cattle shed of the farmhouse in Tandulwadi Shiwar so also half burnt horns and skin of the black bug came to be seized. On very same day by another

panchanama at Exhibit 164, sharp aged weapons and cooked meat came to be seized under panchanama.

8 According to the prosecution case and as deposed by P.W.1-Vilas Shinde, Round Officer who was the leader of the raiding team, there were two four wheeler vehicles on the spot at the time of raid. Evidence of the prosecution goes to show that those two vehicles came to be inspected on 25.3.2009 and incriminating articles such as stains of blood and hair of animal were found in it. This resulted in calling the Forensic Expert named Gaikwad as well as his unnamed colleagues on 27.3.2009 and those two forensic experts as seen from the panchanama Exhibit 192 collected scrapings of blood from the floor of the vehicle as well as hair of the animal found in the vehicles.

9 Cross-examination of P.W.1-Vilas Shinde, Round Officer, who headed the raiding team and who seized articles from the spot shows that on effecting seizure of articles from the spot, he had not sealed those articles by applying wax or lac seal on them. Evidence of this witness as seen from his cross-examination in internal page 30 of his evidence shows that his evidence that

there was raw meat in the bag at the cattle shed is coming on record by way of omission. Similarly, his evidence regarding finding of blood on the floor of farmhouse as well as meat at that place is also seemed to be coming on record by way of omission.

10 P.W.2-Sanjay Ambure, the Range Forest Officer is the investigating officer who ultimately filed the charge-sheet against accused persons. Neither evidence of P.W.1-Vilas Shinde nor evidence of P.W.2-Sanjay Ambure shows that seized articles were kept in proper custody for excluding the possibility of tampering them, leaving apart the fact that those were infact not sealed by using either the wax or the lac seal at the time of the seizure. It is seen from the evidence of P.W.1-Vilas Shinde that at the relevant time, he was the Round Officer entrusted with the work of the Employment Guarantee Scheme and in that capacity, he was also working as the Assistant Wild-life Warden. He seized articles from the farmhouse of Tandulwadi Shiwar. P.W.2-Sanjay Ambure seems to be the Range Forest Officer of the Forest Range where the incident in question occurred. Evidence of P.W.2-Sanjay Ambure shows that in fact the entire investigation of the crime in question

was conducted by P.W.1-Vilas Ambure Round Officer and P.W.2-Sanjay Ambure had only conducted the formality of filing the charge-sheet. It is seen from the evidence of P.W.2-Sanjay Ambure that seized articles were dispatched to office of the Deputy Conservator of Forest, Solapur and they were kept in the office of Deputy Conservator of Solapur till they were sent for the forensic examination. The prosecution has not adduced any evidence to show that at the office of the Deputy Conservator i.e. at the Divisional Office those articles were properly guarded so as to rule out the possibility of their tampering when infact they were not sealed.

11 It is seen from the evidence of P.W.2-Sanjay Ambure that by letter at Exhibit 225 sent by the Range Office, seized articles were sent to the Deputy Conservator of Forest. The Office of the Deputy Conservator of Forest, in turn, by letter at Exhibit 226 had sent seized articles for its forensic examination. Articles seized vide seizure panchanama Exhibit 163 were sent to the Forensic Laboratory on 24.3.2009 and those were received by laboratory on 25.3.2009. As seen from the report of the Forensic

expert, muddemal articles which were seized subsequently were sent on 27.3.2009 for forensic examination and those were received by the Forensic laboratory on 30.3.2009. The officials who were entrusted with custody of seized articles right from the seizure at Tandulwadi Shiwar till sending them to the Forensic Expert from the office of the Deputy Conservator of Forests, Solapur are also not examined by the prosecution to rule out the possibility of tampering the seized articles. Prosecution has not examined carrier of these articles in order to establish that during the transit period, those articles were not tampered. The Division Bench of this Court in the matter of **Tulshiram Bhanudas Kambale and Ors. v. State of Maharashtra** reported in **2000 C.R.L.J. 1566** has held that when seized articles are not properly sealed by applying lac seal, no evidentiary value can be attached to such seized articles. The question is not whether seized articles were tampered but the question is whether there was possibility of tampering the seized articles. Prosecution is enjoined to rule out possibility of tampering of seized articles by adducing clear and cogent evidence that since time of seizure till seized articles

reaches the Forensic Laboratory, they were properly preserved in sealed condition and those were not tampered with. It is necessary to rule out all possibilities of tampering seized articles. At this juncture it is apposite to quote relevant portion from the judgment of the Division Bench of this Court in the matter of **Lalchand Cheddilal Yadav v. State of Maharashtra** reported in **2000 All MR (Cri) 1485**. It reads:-

“11. The position in respect of recovery of blood stained knife on the pointing out of the appellant is hardly better. In the first instance, we feel it pertinent to mention that in the recovery panchanama of the knife, there is no mention that the knife was sealed. The recovery panchanama was a contemporaneous document and absence of mentioning of sealing in the same, in our view, hits the prosecution hard. Since in it, it has not been mentioned that the knife was sealed, we feel it unsafe to accept the evidence of PSI Navkhurkar and the public panch Pramod Waigankar that it was sealed.

Once the factum of sealing of the knife becomes doubtful, possibility of blood being smeared on it prior to its being sent to the Chemical Analyst cannot be ruled out.

In this connection, it would be pertinent to refer to para 8 of the Division Bench decision of the Rajasthan

High Court reported in AIR 1955 Rajasthan 82 (Vol.42 C.N.27), The State v. Motia and others Accused wherein Wanchoo, C.J. (as he then was) observed thus:-

“.....It is, therefore, necessary for the prosecution to produce evidence that steps were taken at once to seal the articles, and that from the time the articles came into possession of the police to the time they were sent for identification before a Magistrate or for examination to the Chemical Examiner the seals remained intact. This evidence is missing in this case. It is, of course not difficult to sprinkle a few human blood stains on articles recovered if somebody wants to do so. We do not say that this was done in the present case; but as precautions were not taken the argument raised on behalf of the accused that this might have been done remains unrefuted.....”

In the instant case, the prosecution has also not proved that right from the time, the knife came into possession of the police and till it was sent to the Chemical Analyst, the seals were intact. Again, it is pertinent to mention that the person who carried the knife to the Chemical Analyst has not been examined by the prosecution.”

In the wake of the discrepant and lacunic evidence regarding sealing seized articles, report of the Forensic Laboratory at Exhibit 183 and 185, etc. to the effect that seized meat, horns, skin, tissues, hairs were of Indian black bug Schedule I a animal is of no consequence. The reason and the finding to that effect recorded by the learned Appellate Court cannot be said to be unreasonable or unwarranted.

12 Apart from this, it is seen from the evidence of the prosecution witnesses that there is undue delay in recording statements of witnesses during the course of investigation. Offence took place allegedly on 21.3.2009 whereas recording of statements of witnesses came to be done in June, 2009. There are several omissions on material aspects in the evidence of PW.1- Vilas Shinde Round Officer who has conducted investigation of the crime in question. Considering the lacunic evidence of the prosecution, it was incumbent on the part of prosecution to examine at-least police personnel who aided the raiding team, they being not forming the employees of the Forest Department at whose instance the raid came to be conducted. However, police

personnel, who accompanied the raiding team are not examined by the prosecution. Employees of the Forensic Laboratory, who were summoned to collect articles from two four wheeler vehicles are also not examined by the prosecution.

13 In the wake of this evidence against accused persons, no infirmity can be found in the impugned judgments and order of the learned Special Judge, Solapur acquitting Respondents-Accused of offences alleged against them. No case for leave is, therefore, made out. As such, the order:

- (1) Leave refused. Consequently, both Criminal Applications are rejected.

(A. M. BADAR, J.)