

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

Criminal Appeal-S-583-SB of 2012 (O&M)

Date of Decision: 16.10.2019

- (1) Iqbal son of Noordin
- (2) Tundu @ Ismail son of Gudan
- (3) Mittal @ Akhtar son of Mangal

..... Appellants

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sarfraj Hussain, Advocate for the appellants.

Mr. Saurabh Mago, Assistant Advocate General, Haryana
for the respondent/State.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed against the impugned judgment and order dated 06.01.2012, passed by learned Additional Sessions Judge Rewari (*hereinafter referred as 'trial Court'*), whereby the appellants have been convicted for the offences punishable under Sections 395/397 of the Indian Penal Code, 1860 (*for short 'IPC'*) and sentenced to undergo rigorous imprisonment for a period of seven years along with fine of ₹ 1000/- (each) with a default clause to further undergo rigorous imprisonment for one year.

Prosecution was initiated on the basis of a written complaint (Ex.PC) of Sher Singh (PW-6), received by S.I. Jagmal Singh, the then Incharge, Police Post Kund (PW-4) on 10.03.2010, alleging that he is running a liquor vend at Bus Stand, Kund, District Rewari. In the

intervening night of 09/10.03.2010 at about 12:30 AM, when salesman-Amit Kumar (PW-7) was present, then five persons came in a Pick-up vehicle of white colour, without number plate and parked the same in front of the vend. Out of them, one had broken the halogen light, installed outside the vend and another pointed the revolver towards him through grill and asked to open the door, otherwise, he would be shot. Salesman hide himself behind the refrigerator. In the meantime, two assailants came near the door, broke its latch with the help of an iron *rod* and entered inside the vend. One assailant, who was having the revolver, caught hold of salesman and put the same on his abdomen giving a warning that in case, he tried to move, would be shot. One of the assailants, took out ₹ 31,640/- from the chest and another searched the bed of salesman. The assailant, who was armed with revolver, snatched the mobile phone of salesman and removed its battery. When all the above three assailants were coming out of the vend, then one person, who was sitting in the vehicle, asked to bring two bottles of beer and one of them took away two '*RDX Super Strong*' beer bottles. When the above three assailants were going towards their vehicle, then salesman pleaded that he is a poor man and requested to give his mobile phone and which was returned, but the assailants retained its battery with them. They kept the salesman inside the vend and bolted the door from outside. Apart from the above three, two of the assailants remained sitted in the vehicle and thereafter, they all proceeded towards Narnaul side. Salesman opened the door and immediately reached at Police Post, Kund on his motorcycle. He narrated the whole incident to SI Jagmal Singh (PW-4) and also informed the owner of vend (PW-6).

On the basis of above complaint, PW-4 recorded the proceedings

(Ex.PD) and forwarded the same to the Police Station for registration of a case, upon which, formal FIR No.48 dated 10.03.2010, under Sections 395, 397 of the IPC and Section 25 of the Arms Act, 1959 (*for short 'Arms Act'*) was registered at Police Station Khol, District Rewari. During investigation, Rough Site Plan dated 10.03.2010 (Ex.PE) of the place of occurrence was prepared. Subsequently, on pointing out of Incharge, Police Post Kund, Scaled Site Plan dated 03.11.2010 (Ex.PA) was also prepared by Draftsman H.C. Dharampal (PW-2). Photographs of the place of occurrence are stated to had been prepared by Photographer Mukesh Kumar. Broken handle (Ex.MO1) along with lock (Ex.MO2) were taken into possession by the police, vide memo (Ex.PF). Appellants Tundu @ Ismail and Iqbal were arrested and during their interrogation, suffered disclosure statements (Ex.PG and Ex.PH) respectively. In pursuance of above disclosures, both the appellants demarcated the place of occurrence, vide memos (Ex.PJ and Ex.PK) respectively. On 04.08.2011, appellant-Mittal @ Akhtar was taken on production warrant and during interrogation, he suffered disclosure statement (Ex.PL) and in pursuance thereof, demarcated the place of occurrence, vide memo (Ex.PM). After completion of investigation, report under section 173 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) was submitted on 10.10.2011 before the Court of learned Judicial Magistrate 1st Class, Rewari (*for short 'JMIC'*). Since the offences were triable by the Court of Sessions, therefore, the case was committed to the learned Sessions Judge by JMIC vide order dated 21.10.2011 and which was assigned to learned trial Court.

After taking into consideration the material available on record, learned trial Court charge-sheeted the appellants for commission of offences

punishable under Sections 395/397, IPC along with Section 25 of the Arms Act, to which, they pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined 11 witnesses, which are as under:-

<i>PW-1</i>	:	<i>Subhash Chand, Record-Keeper;</i>
<i>PW-2</i>	:	<i>H.C. Dharampal, Draftsman;</i>
<i>PW-3</i>	:	<i>ASI Vijay Pal (the then Head Constable);</i>
<i>PW-4</i>	:	<i>S.I. Jagmal Singh;</i>
<i>PW-5</i>	:	<i>H.C. Manoj Kumar;</i>
<i>PW-6</i>	:	<i>Sher Singh (complainant);</i>
<i>PW-7</i>	:	<i>Amit Kumar (Salesman);</i>
<i>PW-8</i>	:	<i>Rajesh Kumar (Criminal Ahlmad);</i>
<i>PW-9</i>	:	<i>SI/SHO Ram Kishan;</i>
<i>PW-10</i>	:	<i>Constable Anil Kumar;</i>
<i>PW-11</i>	:	<i>ASI Sarjeet Singh</i>

Prosecution witnesses, namely, Hari Om, Arvind, Leela Ram, Vikram, ASI Dharambir, Photographer-Mukesh Kumar, EHC Rajesh Kumar and ASI Sat Narain were given up by the Public Prosecutor.

Prosecution also produced the following documentary evidence in support of their case:-

<i>Ex.PA</i>	:	<i>Scaled Site Plan;</i>
<i>Ex.PB</i>	:	<i>Disclosure statement of co-accused Saleem;</i>
<i>Ex.PC</i>	:	<i>Application moved by complainant-Sher Singh to the Incharge, Police Post, Kund;</i>
<i>Ex.PD</i>	:	<i>Endorsement made by Incharge on the application;</i>
<i>Ex.PE</i>	:	<i>Rough Site Plan;</i>

<i>Ex.PF</i>	:	<i>Recovery memo of broken lock;</i>
<i>Ex.PG</i>	:	<i>Disclosure statement of accused Tundu @ Ismail;</i>
<i>Ex.PH</i>	:	<i>Disclosure statement of accused Iqbal @ Noordin;</i>
<i>Ex.PJ</i>	:	<i>Demarcation of place of occurrence;</i>
<i>Ex.PK</i>	:	<i>Demarcation of place of occurrence;</i>
<i>Ex.PL</i>	:	<i>Disclosure statement of accused-Mittal @ Akhtar;</i>
<i>Ex.PM</i>	:	<i>Demarcation of place of occurrence;</i>
<i>Ex.PN</i>	:	<i>Copy of FIR No.48 dated 10.03.2010;</i>
<i>Ex.PO</i>	:	<i>Endorsement of an application (Ex.PB);</i>
<i>Ex.MO1</i>	:	<i>Broken locking handle;</i>
<i>Ex.MO2</i>	:	<i>Lock</i>

After recording the prosecution evidence, entire incriminating material was put to the appellants under Section 313 Cr.P.C., but they denied the same and claimed innocence being falsely implicated by the police, however, no defence evidence was led.

After taking into consideration the entire material available on record and upon hearing both sides, learned trial Court held the appellants guilty for the offences punishable under Sections 395/397, IPC and sentenced them in the terms, mentioned in the opening para of this order, but prosecution failed to prove the charge under Section 25 of the Arms Act, resulting into their acquittal to that extent.

Hence, the present appeal.

It is contended on behalf of the appellants that there is no evidence available on record to prove the charges in this case and learned trial Court has recorded the findings of guilt merely on the basis of surmises and conjectures. Also contended that occurrence is alleged to had taken place in

the intervening night of 09/10.03.2010 at about 12:30 AM, but the FIR was registered on the basis of a written complaint (Ex.PC), made by owner of the liquor vend, namely, Sher Singh (PW-6) on 10.03.2010 at 04:30 PM after due deliberations, manipulations and in connivance with the police. Further contended that there is neither any material on record to prove that an amount of ₹ 31,640/- was lying in the chest; nor the same has been recovered from the appellants and even there is no recovery of the alleged weapons of offence i.e. revolver or *rod*, resulting into acquittal under Section 25 of the Arms Act. Also argued that there are material contradictions in the testimonies of prosecution witnesses and as such, the entire case has become doubtful in view of the fact that except the disclosures of accused, recorded by the police, there is no recovery, leading to connect the appellants for commission of the offence charged against them.

On the other hand, learned State Counsel has opposed the above contentions and submitted that there is sufficient material on record to prove the charges against the appellants, thus, they have rightly been convicted and sentenced by learned trial Court.

Heard both sides and perused the paper-book.

Records of the case reveal that initially, after registration of the FIR No.48 dated 10.03.2010, Investigating Officer (PW-4) recorded the statements of the witnesses under Section 161 Cr.P.C.; prepared rough Site Plan and made recovery of broken lock as well as handle (Ex.MO2 and Ex.MO1) respectively and no further steps were taken in the matter, rather investigation remained dormant for approximately 08 months. Thereafter, on 03.12.2010, disclosure statement (Ex.PB) of co-accused, namely, Saleem son of Janab Ali

was recorded by Head Constable Vijay Pal, Police Station Rampura, District Rewari (PW-3) in another criminal case i.e. FIR No.187 dated 22.10.2010, under Sections 379, 420, IPC, Police Station Rampura, District Rewari regarding his involvement along with the present appellants as well as two other accused, namely, Mubin and Farooq in six different cases including the present occurrence.

Also necessary to mention here that above two co-accused, namely, Saleem and Mubin were tried separately, resulting into their conviction, under Sections 395 and 397, IPC by the same Court, vide judgment and order dated 20.05.2011 and 24.05.2011, respectively. Both the above convicts preferred an appeal No. CRA-S-1545-SB of 2011, but the same was disposed off by a co-ordinate Bench of this Court as having been rendered infructuous, vide order dated 30.04.2018 while observing that they had already undergone the entire sentence of imprisonment. There is no information available about sixth accused, namely, Farooq as to whether he was tried or not?

PW-1 Subhash Chand, Record Keeper brought the original case file pertaining to present FIR, whereby above mentioned two co-accused, namely, Saleem and Mubin were convicted and sentenced, vide judgment and order dated 20/24.05.2011, respectively.

PW-2 H.C. Dharampal, Draftsman deposed that he prepared the Scaled Site Plan dated 03.11.2010 (Ex.PA) with marginal notes of the place of occurrence, which was pointed out by Incharge, Police Post Kund.

PW-3 ASI Vijay Pal (the then Head Constable) stated that on 03.12.2010, he interrogated co-accused Saleem in connection with FIR No.187 dated 22.10.2010, under Sections 379 and 420, IPC, Police Station

Rampura, where he suffered his disclosure statement (Ex.PB), revealing the involvement in the present case as well as six other cases and which was attested by Constables Ramesh Kumar and Dharmender as witnesses.

PW-4 S.I. Jagmal Singh deposed that on 10.03.2010, he was posted as Incharge, Police Post Kund and on that day, he received a written application (Ex.PC) from Sher Singh (PW-6), upon which, he made endorsement (Ex.PD) and forwarded the same to Police Station Khol for registration of formal FIR. He visited the place of occurrence, prepared rough Site Plan (Ex.PE) along with marginal notes and snapshots were taken by Photographer Mukesh Kumar. He also stated that during spot inspection, one broken lock Ex.MO2 along with handle Ex.MO1 were taken into possession, vide recovery memo (Ex.PF). Further stated that statements of witnesses were recorded under Section 161 Cr.P.C. and thereafter, he was transferred.

During cross-examination, this witness candidly stated that nothing incriminating was surfaced against the appellants during investigation conducted by him. Further stated that complainant (PW-6) had disclosed him that miscreants were of young age and except that, nothing was revealed about their identity. When he visited the spot, many persons were present there, but none of them agreed to become witness of the occurrence. Also stated that Forensic Team was called on the spot for the scene of the crime report, but he has not seen any report in this regard.

PW-5 HC Manoj Kumar stated that on 15.07.2011, he was associated with the investigation of this case by ASI Sarjeet Singh (PW-11). On that day, appellants Tundu @ Islam and Iqbal were interrogated and they suffered disclosure statements (Ex.PG and Ex.PH) respectively. Further stated

that both of them demarcated the place of occurrence, vide memos Ex.PJ and Ex.PK respectively. He also stated that on 04.08.2011, appellant-Mittal @ Akhtar was interrogated by above ASI Sarjeet Singh in his presence and he also suffered disclosure statement (Ex.PL), followed by demarcation of the place of occurrence, vide memo (Ex.PM).

During cross-examination, this witness stated that appellant-Tundu was interrogated in Police Station Khol, whereas appellant-Mittal was interrogated in the Court premises, but no independent witness was joined at the time of recording their disclosures. He has specifically stated that *“no recovery was effected from the accused persons in pursuance of their disclosure statements”*.

PW-6 Sher Singh (complainant) deposed that Amit Kumar (PW-7) was working as salesman at the liquor vend. In the intervening night of 10.03.2010, a telephonic call was received from Police Post Kund regarding the incident of loot. He reached at the liquor vend, found that police was present on the spot. Lock of the door had been broken and which was lying there. Further deposed that salesman told him about the incident regarding the loot of ₹ 31,640/- from the vend, which was being run in partnership with Vikram, Harsh, Hariom and Arvind.

During cross-examination, this witness stated that he got the application typed at Rewari court premises on the next morning. He narrated the facts to the typist and the application was drafted on the advice of typist as well as his own narration. Further stated that on the same day, he met Superintendent of Police, Rewari at about 11:00 AM, then went to his native village Majra and after staying there for one and half hour, reached Police Post

Kund. Also stated that his house is situated at a distance of about 3 Kms. from liquor vend and he used to stay at vend from 8:00 AM till 10:00 PM. He himself used to manage the cash, but accounts were maintained by the Accountant. As per the testimony of this witness, there were two employees at liquor vend; one of them used to stay in day time, whereas other for night. He further stated that salesman-Amit Kumar used to stay during night. He candidly stated that there was no sale after 10:00 PM in the night. Again stated that daily sale account of the liquor vend is maintained, but the same was not given to the police. He has specifically stated that no details of currency notes were supplied to the police.

PW-7 Amit Kumar deposed that on 09.03.2010, he was working as salesman at the liquor vend, Kund, owned by Sher Singh (PW-6) as well as others. At about 12:30 in the night, when he was sleeping, heard a sound that light had been broken. He immediately got up and saw that a man was standing outside the vend, who asked him to open the door, otherwise, he would shot him. The person was armed with a revolver, therefore, he got frightened and hide himself behind the refrigerator. Two persons started breaking the lock of the door and after doing this, they entered inside the vend and caught hold of him. The person, who was armed with revolver, also followed them and caught hold him from his collar as well as put the revolver on his stomach. All three assailants started searching his bed and the currency chest. They took out an amount of ₹ 31,640/- from the chest and while leaving the place, asked him to give his mobile. He requested the assailants to give his mobile and after removing its battery, they returned the same to him. When the assailants were leaving the place of occurrence, one person, who was sitting in

the vehicle, asked them to fetch two bottles of beer. One of the assailants picked up two bottles of beer and latched the door from outside. Thereafter, all of them left towards Narnaul side in their vehicle. Although, he tried to note the number, but vehicle was without any number plate. He immediately opened the door, reached at the Police Post Kund on his motorcycle and narrated the entire incident to the police officials. Further stated that police telephonically informed the owner of the vend (PW-6) and within 5-7 minutes, he (owner) reached there. Police inspected the spot, took into possession broken handle of the gate vide recovery memo (Ex.PF), latch (Ex.MO1), lock (Ex.MO2) and his statement was also recorded by the police.

During cross-examination, this witness stated that owner of the vend belongs to village Majra, which is at a distance of about 1.25 Kms. and he used to stay there. Further stated that he was working at the liquor vend for the past three months prior to the date of occurrence and he used to stay at the vend during night time. He further stated that vend operates till 10:00 PM. Owner used to come at 6:00 AM and would go back to village at about 9:00 PM. He also stated that owner used to manage the account as well as the cash at the vend and no sale is made after 10:00 PM. He candidly stated that complainant used to take the entire sale proceeds with him. He disclosed about the physical description of the assailants to the police while recording his statement. He also stated that occurrence continued for 04 (four) minutes and the assailants had done everything within this period. Further stated that he saw the assailants on the day of occurrence and thereafter, he had seen them first time in the Court. He further stated that neither any identification parade was conducted by the police; nor any details of currency notes were asked

from him. He also stated that no injury was inflicted to him by the assailants and he did not put any resistance due to fear. He candidly stated that there is sufficient traffic on the Delhi-Narnaul road during night time.

PW-8 Rajesh Kumar, Criminal Ahlmad brought the summoned record of FIR No.187 dated 22.10.2010, under Sections 379, 420, IPC, Police Station Rampura and deposed about the pendency of the trial in that case on 08.12.2012 for prosecution evidence.

PW-9 SI/SHO Ram Kishan deposed that on 15.09.2011, he prepared report under Section 173 Cr.P.C., which was presented before the Illaqa Magistrate and ASI Satnarayan recorded the formal FIR (Ex.PN) in this case.

PW-10 Constable Anil Kumar stated that on 10.03.2010, he was posted at Police Station Khol and on that day, he delivered the special report to the higher police officers as well as Illaqa Magistrate.

PW-11 ASI Sarjeet Singh deposed that on 15.07.2011, appellants Tundu @ Islam and Iqbal were interrogated by him and both of them suffered disclosure statements (Ex.PG and Ex.PH) respectively, which was witnessed by HC Manoj Kumar (PW-5). In furtherance to their disclosures, both of them demarcated the place of recovery, vide memos (Ex.PJ and Ex.PK) respectively. Thereafter, on 04.08.2011, accused-Mittal @ Akhtar was taken on production warrant in this case and he was interrogated in the presence of HC Manoj Kumar and he also made a disclosure statement (Ex.PL), leading to the demarcation of place of occurrence, vide memo (Ex.PM).

During cross-examination, this witness stated that accused Iqbal was interrogated in Police Station Khol at about 8:30 AM, but no recovery or any fresh facts were discovered in pursuance to his disclosure statement. Also

stated that no independent witness was joined during his interrogation and the place of occurrence demarcated by accused was already in the knowledge of police. He further stated that no test identification parade was conducted.

As per prosecution case, the occurrence had taken place at 12:30 AM in the intervening night of 09/10.03.2010. Immediately, salesman (PW-7) reached at Police Post Kund, informed the Incharge (PW-4) as well as owner of the vend (PW-6). Thereafter, PW-6 also reached on the spot, but no efforts were made by the police to apprehend the miscreants despite the gravity of the offence. Even there is nothing on record that any entry was made regarding the occurrence in the *Roznamcha*/Register, maintained with the Police Post Kund or Police Station Khol about the information supplied by salesman at the relevant time. Curiously, as per the endorsement (Ex.PD), the complaint was received by ASI Jagmal Singh (PW-4) at Bus Stand, Kund on 10.03.2010 at 4:30 PM despite the fact that salesman as well as complainant-owner of the liquor vend were very much available during night time and even the police had also visited the place of occurrence at that time, but no police proceedings are coming forward prior to the registration of the FIR. As per the testimony of the owner (PW-6) itself, he reached at the place of occurrence immediately, but there is nothing on record that his statement was recorded by the police at that point of time, rather he had chosen to go slow in the matter. First he met the Superintendent of Police during day time, then went to his native village and ultimately, at 4:30 PM, a written complaint (Ex.PC) was made to PW-4 despite the fact that he was made aware about the occurrence during night time by PW-7. Therefore, the possibilities cannot be ruled out in the matter that complaint (Ex.PC) was the result of due deliberations and afterthought,

resulting into the registration of FIR at 04:30 PM on 10.03.2010. Thus, in the interregnum i.e. between 12:30 AM till 04:30 PM, approximately for 16 hours, neither any steps were taken by PW-4 to apprehend the accused; nor any proceedings were recorded in any manner, rather the police remained completely relaxed for the reasons best known to them. There is nothing on record to substantiate that any intimation, message or information was shared/forwarded to any other official/officer of the neighbouring police station to nab the assailants by putting any barricade on the road despite the nature of allegations. Although, it has come during the testimony of the Investigating Officer (PW-4) that a team for scene of the crime report reached at the place of occurrence, but no such report is available on record in this regard.

Concededly, no test identification parade was conducted by the police in the matter and the accused were identified by the salesman (PW-7) first time in the Court during their trial. There is neither any evidence on record to prove that any cash amount was lying in the currency chest; nor any sale register has been produced regarding the sale of liquor. Even the salesman (PW-7) has also stated that owner used to remain at the liquor vend from 8:00 am till 10:00 PM, managing the entire cash transactions, used to take the sale proceeds while going back to home at 10:00 PM and thereafter, there was no sale of liquor.

Still further, as per the testimony of complainant (PW-6), the usual sale of the liquor was ₹ 15,000/- per day and he used to carry the cash with him in the night at 10:00 PM. Complainant has specifically deposed during his testimony that there was no sale of liquor after 10:00 PM, then in such a

scenario, it is not discernible as to how the amount of ₹ 31,640/- was lying in the chest, more particularly, when the liquor vend was being run from a temporary structure and not a permanent shop. Salesman (PW-7), in his testimony, has deposed that everything had happened within 04 (four) minutes, thus, it is another suspicious circumstance that how the accused looted the amount of ₹ 31,640/- from the chest within such a short span when there is no allegation that they demanded the key of the chest or the same was handed over to them by the salesman or that key was snatched by the assailants forcibly from the salesman.

Although, the disclosures (Ex.PG, PH and PL) of all three appellants were recorded by the police, but there is no recovery in pursuance of these disclosures. No doubt, the prosecution is claiming that place of occurrence was identified by the appellants after their disclosures, but concededly, the place of occurrence was already in the knowledge of the police, therefore, no much credence can be given to the identification of place of occurrence by the appellants. Even the scaled site plan (Ex.PA) of the alleged place of occurrence was prepared after a gap of approximately eight months i.e. 03.11.2010 and that too, on pointing out of the Incharge, Police Post, thus, it is also not a worth piece of evidence. Record reveals that after 10.03.2010, the investigation of the case remained in a cold storage for almost eight months and all of a sudden, on the basis of disclosure of co-accused Saleem (Ex.PB), the police had woken up, but nothing incriminating has been recovered in pursuance of the disclosures made by the appellants. Still further, perusal of Ex.PB reveals that disclosure was recorded by HC Vijay Pal Singh, Police Station Rampura on 03.12.2010, which was witnessed by Constable Ramesh

Kumar and Constable Dharmender, but none of them has been examined by the prosecution for the reasons best known to them. Testimony of ASI Sarjeet Singh (PW-11), who happens to be the second Investigating Officer, reveals that appellants Iqbal and Tundu @ Islam were interrogated by him on 15.07.2011, but it is not discernible as to how and from where, they were apprehended by ASI Sarjeet Singh. Moreover, except the disclosures (Ex.PG, PH and PL) of the appellants, there is no material on record to connect them with the commission of the offence.

Neither any currency notes; nor the weapons of offence i.e. revolver/rod were recovered by the police during investigation. It has also come in the testimony of complainant (PW-6) that liquor vend was being run in partnership with four other partners, namely, Vikram, Harsh, Hariom and Arvind, who were cited as prosecution witnesses, but none of them has been examined, rather all were dropped by the prosecution for the reasons best known to them. Although, it is the case of the prosecution that Mukesh Kumar, Photographer had prepared the photographs of the place of occurrence, but neither he has been examined; nor any photograph(s) are available on record.

Salesman (PW-7) stated that he was confined inside the liquor vend by the assailants, door was bolted from outside and thereafter, all of them left in their vehicle towards Narnaul side at about 12:30 AM in the night. He has also stated that the only halogen light installed in front of the liquor vend was broken by the assailants and he had not seen the faces of remaining two persons, who were sitting in the vehicle, then it is not discernible as to how he identified all of them during trial.

Also to be noticed that salesman (PW-7), during his testimony, has not pointed out specifically that which of the assailants had snatched the amount of ₹ 31,640/- from the chest. Even the prosecution has failed to prove that any such amount was lying in the chest on 09/10.03.2010 at 12:30 AM. Neither any record of the sale of liquor pertaining to the date of occurrence has been produced before the learned trial Court; nor any other documents were shown to this Court during the course of hearing in that regard.

In view of the facts and circumstances, discussed hereinabove, this Court is of the opinion that charge against the appellants is not proved beyond reasonable doubt; rather entire prosecution case is full of doubt and thus, they are entitled for benefit of doubt. Consequently, the appeal is allowed. Impugned judgment of conviction and order of sentence dated 06.01.2012, passed by learned trial Court, are set aside and appellants are acquitted of the charges.

Since the judgment of conviction and order of sentence dated 06.01.2012, passed by learned trial Court have been set aside by this Court and all three appellants, namely, Iqbal, Tundu @ Ismail and Mittal @ Akhtar are acquitted of the charges, therefore, they be released from the custody forthwith, if not required in any other criminal case.

October 16, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>