

State of Haryana Vs. Wasim etc.

CHI-712-2022

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HRSOB10040912022



Presented on : 11-10-2022
Registered on : 11-10-2022
Decided on : 06-02-2026
Duration : 3 years, 3 months, 26 days

**IN THE COURT OF
Judicial Magistrate - Ist Class
AT Gohana, Sonipat
(Presided Over by Dr. Jyoti)**

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State	Versus	1. Iqbal son of Ibrahim, resident of Laharwari, Punhana, Nuh. 2. Wasim son of Jasmal, resident of Nagla, P.S. Kanpur, Hasanpur, Palwal.Accused
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FIR No. 29 dated 31.01.2018
Under Sections: 380, 411, 120-B IPC
Police Station: Sadar, Gohana

Presence: Ms. Chandni, Learned Assistant Public Prosecutor for the
State
Accused Iqbal on bail in this case, but in custody in some
other case, represented by Sh. Ajit Singh, Advocate.
Accused Wasim on bail with Sh. Vikram Panchal,
Advocate.

JUDGMENT:

The above-named accused have been sent up by the SHO,
Police Station, Sadar, Gohana to face trial for the commission of

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offence punishable under Section 379/411/120-B of Indian Penal Code, 1860. (In short 'IPC')

2. In brief, the case of the prosecution as revealed from the final report submitted under Section 173 of Code of criminal procedure, 1973 is that on 31.01.2018, complainant Satish son of Nafe Singh, resident of Shamri, came to the Police Post and presented a complaint mentioning therein that he had parked his tractor No.HR-11F-9340, brand Farm track 6055, inside Gher of his house in village Shamdi. During night of 29/30-01-2018, some unknown persons committed theft of his tractor No. HR 11F-9340 bearing chassis No.TO52313272 and engine No. E2317526. Till now, he was searching for his tractor at many places, but could not find it. He requested for taking legal action. On this complaint, FIR was registered and investigating was initiated. During investigation, co-accused Phool Singh @ Phula, Anish Khan @ Nawab, Ashu@Sukha, Amit@mita had been arrested against whom challan had been filed before the court on 11.05.2018. Further against accused namely Parveen@Pinna challan had been presented in court on 11.11.2018. Thereafter, accused facing trial namely Wasim Khan was duly arrested in the present FIR and on completion of investigation supplementary challan was presented in court. And, then after arrest of accused Iqbal facing trial supplementary challan was presented in court.

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3. On completion of investigation, final report under Section 173 of the Code of Criminal Procedure, 1973 was presented in court against accused for commencement of trial.
4. Copy of the challan and other requisite documents were given to the accused free of costs as envisaged under Section 207 of the Code of Criminal Procedure, 1973.
5. Finding a prima facie case, charge was framed against the accused Wasim under Sections 380, 411 and 120-B IPC on dated 23.03.2023 by the court of Sh. Sanjay, the then learned Judicial Magistrate, First Class, Gohana and against accused Iqbal under Sections 380 and 120-B IPC on dated 01.04.2021 by the court of Ms. Viniti, the then learned Judicial Magistrate, First Class, Gohana, to which, the accused did not plead guilty and claimed trial.

EVIDENCE:

6. The prosecution during the course of its evidence has examined following witnesses. The list of witnesses are as follows: -

Sr. No.	Name
PW1	Constable Pawan Kumar
PW2	ASI Rambir
PW3	SI Ramesh
PW4	HC Satpal
PW5	EHC Surender
PW6	ASI Pardeep.
PW7	SI Suresh

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PW8	ASI Krishan.
PW9	ASI Dinesh
PW10	ASI Sandeep.
PW11	EHC Rajesh Kumar
PW12	Satish son of Nafe Singh.
PW13	Inspector Kuldeep Singh

The list of documents are as follows: -

Exhibits	Documents
Ex. PB	Police proceedings.
Ex. PD	Site plan.
Ex. PW3/A	Disclosure statement of accused Phool Singh
Ex. PW3/B	Disclosure statement of accused Anish Khan.
Ex. PW3/C	Disclosure statement of accused Ashu.
Ex. PW3/D	Disclosure statement of accused Amit.
Ex. PW4/A	Disclosure statement of accused Phool Singh
Ex. PW4/A	Disclosure statement of accused Iqbal.
Ex. PW4/B	Disclosure statement of accused Ashu.
Ex. PW4/C	Disclosure statement of accused Anish Khan.
Ex. PW4/D	Demarcation memo.
Ex. PW5/A	Disclosure statement of accused Amit @ Mita.

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Ex. PW5/B	Demarcation memo.
Ex. PW5/C	Recovery memo of currency notes.
Ex. PW5/D	Photo copies of currency notes.
Ex. PW6/A	Disclosure statement of accused Praveen.
Ex. PW7/A	Final report under Section 173 Cr.P.C. of accused Iqbal.
Ex. PW8/A	Arrest memo.
Ex. PW8/B	Disclosure statement of accused Iqbal.
Ex. PW8/C	Demarcation memo.
Ex. PW10/A	Demarcation memo.
Ex. PW10/B	Site plan.
Ex. PW11/A	Demarcation memo.
Ex. PW12/A	Copy of complaint.

7. PW1 Constable Pawan Kumar deposed that on 06.03.2018, he was posted on general duty Special Staff, Sonipat. On that day, he remained present during investigation with investigating officer in FIR No.52/2018. On that day, accused Phool Singh, Anish Khan. Ashu alias Sukha were interrogated, who then had suffered their disclosure statements Ex.PW3/A to Ex.PW3/C, which bears his signatures and of Head Constable Yogesh being witness. Further

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deposed that accused are present in Court.

8. PW2 ASI Rambir deposed that on 31.01.2018, he was posted as investigating officer, police post Mundlana. On that day, on receiving complaint at police post, he initiated action taken by police Ex. PB and sent it through EHC Surrender to police station for registration of FIR. Thereafter he went to the spot and prepared site plan Ex. PD. Further, he recovered photocopy of RC of tractor No.HR-11F-9340 vide memo Ex. PE, whereupon he obtained signatures of complainant. Further deposed that then supplementary statement of complainant was recorded.

9. PW3 SI Ramesh deposed that on 18.03.2018, he was posted as investigating officer police post Mundlana. On that day accused Anish Khan, Ashu @ Sukha, Phool Singh @ Phoola, accused in FIR No.29/2018 were joined in investigation in the present FIR after taking permission from the court. During investigation, accused Phool Singh suffered disclosure statement Ex.PW3/A, Anish suffered disclosure statement Ex.PW3/B and Ashu alias Sukha suffered disclosure statement Ex.PW3/C. On 20.03.2018, accused Amit got suffered disclosure statement Ex.PW3/D. Further deposed that accused persons then got place of occurrence demarcated.

10. PW4 EHC Satpal deposed that on 19.03.2018, he was posted on general duty at police post Mundlana. On that day, in his

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presence accused persons Phoola @ Phool Singh, Ashu @ Sukha, Anish Khan were joined in investigation and then arrested. During interrogation, accused suffered their disclosure statements Ex.PW4/A, Ex.PW4/B and Ex.PW4/C and then accused in pursuance of their disclosure statement got place of occurrence demarcated, vide memo Ex.PW4/D. On 20.03.2018, accused Amit alias Meeta was joined in investigation who then suffered disclosure statement Ex.PW5/A and got place of occurrence demarcated vide memo Ex.PW5/B which bears signatures of EHC Surender being witness.

11. PW5 EHC Surender deposed that on 20.03.2018, he was posted on general duty at police post, Mundlana. On that day, accused Amit @ Meeta was joined in investigation who then suffered disclosure statement Ex.PW5/A and then got place of occurrence demarcated vide memo Ex.PW5/B. In pursuance of disclosure statement, accused produced Rs.3000/- out of Rs.7000/- which were recovered vide memo Ex.PW5/C and photocopy of currency Ex.PW5/D was prepared. Further deposed that memos bears his signatures being witness.

12. PW6 ASI Pradeep deposed that on 27.02.2018, he was posted as investigating officer police post Mundlana. On that day, with the permission of the Court accused Praveen son of Krishna was joined in investigation who then suffered disclosure statement Ex.PW6/A and

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then got place of appearance demarcated vide memo Ex.PW6/B.

13. PW7 ASI Suresh deposed that on 31.01.2018, he was posted as Duty Officer, Police Station, Sadar, Gohana. On that day, on receiving Tehrir through EHC Surender, he registered FIR Ex.PW7/A and proved endorsement Ex.PW7/B.

14. PW8 ASI Krishan deposed that on 27.11.2020, he was posted as investigating officer police post Mundlana. On that day, he remained present during investigation with ASI Dinesh during investigation, accused Iqbal son of Ibrahim was produced on production warrants got issued from court on the application of investigating officer ASI Dinesh, who was then joined in investigation and was arrested vide memo Ex.PW8/A. During interrogation, accused suffered disclosure statement Ex.PW8/B and then got place of occurrence demarcated where he had handed over tractor No.HR- 11F-9340 to his friend Wasim Khan for selling the same vide memo Ex.PW8/A. Further deposed that he had got recorded his statement under section 161 Cr.P.C. Further identified accused present in court.

15. PW10 ASI Sandeep deposed that on 25.07.2022, accused was produced in court in FIR No.47/2018, accused Wasim was then joined in investigation by way of moving an application and then was duly arrested. Accused then suffered disclosure statement Ex.PW10/A and Rs.3000/- recovered from him were taken in police possession

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vide memo Ex.PW5/C. Site plan of place of recovery Ex.PW10/B was prepared. On next day, accused was produced before the Court. Statement of witnesses were recorded and then identified his signatures on memos being witnesses. Further deposed that accused Wasim has applied for exemption, whom he can identify on seeing him.

16. PW11 EHC Rajesh Kumar deposed that on 27.09.2018, he was posted at police post Mudlana on general duty. On that day, he remained present during investigation with Head Constable Pradeep, accused Praveen son of Krishan was arrested by investigating officer who then suffered disclosure statement Ex.PW6/A and then got place of occurrence demarcated vide memo Ex.PW11/A, which bears his signatures being witness.

17. PW12 Satish son of Nafe Singh deposed on 29/30-01-2018, during night time, theft of his tractor No.HR-11F-930 has been committed from his house, in this regard, he had moved complaint Ex.PW12/A in police station which bears his signatures at point A.

18. PW13 Inspector Kuldeep Singh deposed that in 2018, he was posted at special staff Sector 3 Sonipat. Further deposed that he had arrested Phool Singh @ Phoola in FIR No.42/2018, Police Station, City, Gohana, who then during interrogation, confessed that he along with his partners Praveen @ Peena, Amit @ Meeta had committed theft of tractor farmtrack in the month of January 2018 from village

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Shamri.

19. Constable Pawan and HC Yogesh were given up considering them unnecessary by learned APP for the State. PW SHO Krishan Kumar was given up considering him as unnecessary by learned Assistant Public Prosecutor for the State, vide his separately recorded statement dated 03.06.2025. PW Criminal Ahlmad was given up considering his as unnecessary by learned Assistant Public Prosecutor for the State, vide his separately recorded statement dated 15.09.2025.

20. Thereafter, learned Assistant Public Prosecutor for the State has closed prosecution evidence, vide his separately recorded statement on 26.09.2025.

21. After this the entire incriminating evidence was put to the accused persons and their statement under Section 313 of the Code of Criminal Procedure recorded without oath, on 26.09.2025, to which, they denied to all the allegations made therein and opted to lead evidence in defence, but no defence evidence was led and defence evidence has been closed by learned counsel for accused persons vide separately recorded statement on 28.01.2026.

ARGUMENTS: -

22. Initiating the arguments, learned Assistant Public

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Prosecutor for the State has argued that prosecution has proved the guilt of accused beyond the shadow of reasonable doubts by leading documentary as well as oral evidence. It is further prayed that accused persons be convicted under the charges with maximum punishment be inflicted on him.

23. On the other hand, learned counsel for the accused has vehemently argued that the prosecution has completely failed to prove the guilt of the accused persons as there is no evidence on record to establish any kind of link between the alleged offences and the accused. There is no evidence on record showing involvement of accused. It is further prayed that accused persons be acquitted of the charges levelled against him as the prosecution has totally failed to discharge its burden.

FINDINGS

24. Arguments heard. Case file perused.

25. After having heard learned Assistant Public Prosecutor for the State and learned counsel for the accused, it remained amply clear that in order to prove the guilt of the accused, it remained incumbent over the prosecution to prove that on 29/30.01.2018, accused persons with other co-accused entered into a criminal conspiracy to commit theft of tractor no. HR11F9340 marka farm track 6055 of complainant

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and in pursuance of said conspiracy, affected theft of tractor bearing RC no. HR11F9340 marka fram track 6055 of complainant from Ghair of complainant, which was later recovered from accused Wasim. This is also the point of determination.

26. In the instant FIR, it is pertinent to take note of this fact that initially Challan had been filed in the court against co-accused, and then present accused were joined into investigation and then supplementary Challan against accused facing trial was filed separately before the court. hereafter, charges against accused Wasim had been framed by by the court of Sh. Sanjay Vinti, the then learned Judicial Magistrate First Class, Gohana vide orders dated 23.02.2023 and against accused Iqbal vide orders dated 01.04.2021 by the court of Ms. Vinti, the then learned Judicial Magistrate First Class, Gohana. Then prosecution evidence was recorded merging the files.

27. After having heard learned counsel for both the parties and on careful perusal of file, it is amply clear that though the prosecution has got examined as many as thirteen witnesses in order to prove the guilt of the accused but has failed to prove the guilt of any of the accused beyond reasonable doubt on the following grounds: -

28. Firstly that accused Iqbal has been charge-sheeted under section 380/120-B of IPC and accused Wasim is charge-sheeted for 380/120B/411 of IPC with the allegations that accused persons with

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other co-accused entered into a criminal conspiracy to commit theft of tractor bearing RC no. HR11F9340 marka fram track 6055 of complainant and in pursuance of said conspiracy, affected theft of tractor bearing RC no. HR11F9340 marka fram track 6055 of complainant from Ghair of complainant, which was later recovered from accused Wasim. However, admittedly, neither complainant nor anyone else saw the alleged theft originally done by accused present in court as perusal of the file shows that initially FIR had been registered against unknown person only. Also, PW12 Satish has stated in his cross-examination that he had not got mentioned name of any specific person who allegedly committed theft of his vehicle. There is no CCTV on record nor any documentary evidence in the form of mobile location or any other evidence is there on file on the basis of which it can be concluded that accused facing trial committed theft as alleged.

29. Even otherwise, qua the present accused it never remained the case of prosecution that they committed theft of Farm track tractor of complainant as perusal of challan itself shows allegations against the present accused facing trial had been arrested in the present FIR on the basis of disclosure statement suffered by co-accused Phool Singh, Amit@Mita, Dharambir@Dharma and Parveen@Pinna whose version in their respective disclosure statements remained that in December 2017, co-accused Phool Singh along with accused Amit@Mita,

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Dharambir@Dharma and Parveen@Pinna hatched a conspiracy to commit theft of tractors from streets of Sonipat, Panipat and Rohtak and then in pursuance of conspiracy talked to Iqbal and Wasim Khan that they will hand over stolen vehicles to Wasim and Iqbal who then will have responsibility of selling them. And, then in pursuance of criminal conspiracy on 29/30.01.2018, during night hours, he, along with Amit alias Mita, Dharambir alias Dharma, Praveen alias Pinna committed theft of farmtrack 6055 from one gear of village Shamri. Thereafter, in pursuance of conspiracy, they handed over said tractor to Iqbal and Wasi and Anish Khan alias Nawab and Ashu during evening hours of 30.01.2018.

30. Further, perusal of disclosure statement, Ex.PW9/A of accused Iqbal shows that accused had suffered disclosure statement to the effect that on 30.01.2018 Dharambir alias Dharma, Praveen alias Pina, Phool Singh alias Phoola and Amit alias Mita, had handed over stolen tractor 6055 No.HR-11F-9340, farmtrack to him and his friend Wasim. He then had taken Rs.10,000/-from Wasim Khan and then handed over the same to Wasim Khan son of Jasmal Khan alias Jansa, resident of Nangal Khanpur, for selling the same, and further he got demarcated place where he had handed over tractor to Wasim Khan for selling the same. However, it be noted that absolutely no recovery of any money is affected from accused Iqbal in pursuance of disclosure

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statement suffered by him and as far as discovery of new fact regarding the place where he allegedly handed over tractor which remained stolen property to accused Wasim is concerned, no doubt, perusal of the case file shows vide demarcation memo Ex.PW8/C accused Iqbal had got demarcated Gher of his house as place where he had handed over tractor HR-11F-9340 to Wasim Khan son of Jasmal Khan, however, there came no evidence on record that any tractor had been recovered from accused Wasim also so as to prove chain of custody. Rather, it be noted that on arrest, accused Wasim Khan though suffered disclosure statement Ex.PW10/A thereby disclosing name of his friend Kala, resident of Bharatpur, Rajasthan to whom he allegedly handed over stolen tractor in Rs.two lakh, but perusal of file shows that no investigation has been done by investigation agency to the effect of arresting said Kala as accused or qua affecting recovery of stolen tractor from him.

31. And, it is pertinent to take note of this fact in pursuance of disclosure statement suffered by Wasim Ex. PW10/A, only recovery of currency notes of Rs.3000/- had been affected vide memo Ex.PW5/C. And, perusal of the recovery memo Ex. PW5/C shows that as per the recovery memo, accused Wasim got recovered Rs.3000/- in denomination of Rs.500/-, total six notes from bed kept inside his house but this memo does not bear signatures of any such independent

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witness. This shows amply that investigating agency had not complied with the provisions under section 100 (4) of CRPC, which is now replaced by Section 103(4) of BNSS, 2023. Non-compliance with the mandatory provisions as contained in Section 100(4) of Cr.P.C. in itself vitiate the recovery and due to non-joining of independent witness, the entire case of the prosecution depends upon testimony of the official witnesses. It is pertinent to mention here that the testimony of police official cannot be discarded merely because it comes from the official sources and can form the sole basis of conviction if the same is cogent. But in the present case the testimonies of official witness are suffered by discrepancies and contractions. No plausible explanation has been furnished by the prosecution side for non-joining of any independent witness. Therefore, a reasonable shadow of doubt is casted over the version of the prosecution. Even otherwise, amount of money recovered is not so huge that cannot be found with any person in normal circumstances. Further, all these circumstances, casts a cloud on the case of prosecution.

32. In the facts in hand, admittedly tractor is not recovered till date nor is traced out as PW12 Satish, complainant, has stated in his cross-examination that he had not found his tractor till date, nor had been traced out by the police. Further that he and police had not even found any part of the tractor. And, even no further investigation came

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on file qua the accused in whose name allegedly stolen tractor then was passed.

33. Nextly, the prosecution has contended that all the accused persons have acted in pursuance of criminal conspiracy, however, has failed to prove the same on record as in order to prove the offence under section 120 of IPC, it is required for the prosecution to prove the existence of agreement between the accused persons for doing of an illegal act or for doing by illegal means an act which may not itself be illegal. No doubt, normally there remains no direct evidence of conspiracy as it is always hatched in utmost secrecy and same can be inferred from the circumstances, however, perusal of the entire evidence led by the prosecution shows that prosecution has not been able to establish the chain of circumstances by which it can be inferred that there ever existed a conspiracy. In order to prove the conspiracy, it was required for the prosecution to specifically bring on record evidence depicting particulars of name of the places or where accused persons met and hatched conspiracy. No doubt, though in the present FIR, previously in main file, co-accused Anish, Amit, Phool Singh confessed their guilt and accordingly had been held guilty by learned predecessor court on 18.09.2019, however, it is settled that the conviction on the basis of confession alone of the co-accused, cannot be the basis, in the absence of other substantive evidence on record.

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34. It is settled proposition of law that prosecution has to prove its case beyond reasonable shadow of doubt. In **Narender Singh and Anr. Vs. State of M.P. 2004 (3) RCR Criminal 613** the Hon'ble Supreme court of India held that presumption of innocence is a human right and burden of proof remains on the prosecution. Similarly, in **Sachan Pal Vs. Phani Pal and Anr. Reported in 2004 (1) RCR Criminal 211**, the Hon'ble Supreme Court held that "prosecution can succeed by substantially proving the version it alleges. It must stand on its own legs and cannot take advantage of the weaknesses in defence case". In this case, Hon'ble Supreme Court also held that "if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted". In view of aforesaid, in the considered opinion of this court the prosecution failed to prove its case against the accused.

35. It is a cardinal principle of criminal jurisprudence that prosecution has to prove its case beyond reasonable doubts by leading reliable, cogent and convincing evidence. Further, it is a settled proposition of criminal law that in order to successfully bring home the guilt of the accused, prosecution has to stand on its own legs and it cannot derive any benefits whatsoever from the weakness, if any, in the defence of the accused. Accused is entitled to the benefit of every

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reasonable doubt in the prosecution story and any such doubt in the prosecution case entitles the accused to acquit.

36. Therefore, keeping in view the overall conspectus of the case, I am of the considered view that prosecution has miserably failed to discharge the burden imposed on it by law of satisfying this Court beyond reasonable doubt of the guilt of accused Iqbal and Wasim present in the Court. Therefore, this Court gives benefit of doubt to the accused and accordingly, accused present in Court are hereby acquitted of the charges levelled against them. Case property, if any, be disposed of as per the rules. In compliance of Section 437-A Cr.P.C. which is now replaced by Section 481 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, bail bonds already furnished on behalf of accused persons stand extended for a further period of 6 months, and in case no appeal is preferred after lapse of 6 months, same stand discharged. File be consigned to record after due compliance.

Announced in open court:

Dated: 06.02.2026

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Judicial Magistrate Ist, Class

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Note: Certified that all the (19) pages of this judgment have been checked and signed by me.

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Judicial Magistrate Ist, Class

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(Deepak Kumar)

Stenographer-II

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