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

1. CRA-S-3660-SB of 2014

Narul Islam Maulik and others Appellants

Versus

State of Haryana Respondent

2. CRA-S-3020-SB of 2014

Mohammad Hilal and others Appellants

Versus

State of Haryana Respondent

Date of Decision : November 29, 2016

CORAM : HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN

Present: Mr. Man Mohan, Advocate,
for the appellants (CRA-S-3660-SB of 2014).

Mr. Gaurav Sharma, Advocate,
legal aid counsel for the appellants
(in CRA-S-3020-SB of 2014).

Mr. Munish Dev Sharma, AAG, Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

Both the present appeals are directed against the judgment of

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conviction dated 01.04.2014 and order of sentence dated 02.04.2014 passed by learned Additional Sessions Judge, Panchkula, whereby the appellants were convicted and sentenced as under:-

Under Section	Sentence	In default
395 IPC read with 397 IPC	to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs.1000/-	To further undergo simple imprisonment for one month
342 IPC	to undergo Rigorous Imprisonment for a period of 1 year and to pay a fine of Rs.1000/-	To further undergo simple imprisonment for one month

(The sentences of appellants were ordered to run concurrently)

2. Relevant facts for the purpose of decision of these appeals; that on 16.07.2010, Mahinder Partap Singh reported to the police that he along with his wife and son was sleeping in their house. At about 1.00 am (midnight) 7 persons entered their house who were having muffled faces. One person was carrying country made pistol and others were armed with knives. They asked for money. Meanwhile, they took them to another room. They removed bracelet, gold chain and gold rings from his person. Similarly, gold chain, two bangles worn by his wife and gold chain and gold rings worn by his son were removed from their person. They tied their mouth, hands and legs with clothes and went to the first floor of the house from where they brought down his brother Rakesh, his wife Poonam and their children in their room and also tied their mouth, hands and legs with clothes. The gold articles worn by them were also removed by the

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assailants. Some of them had gone to the second floor, brought down his another brother Vinod Kumar, his wife and children in their room and the jewellery articles were removed from their person also. Assailants searched their house and removed cash, jewellery and mobile phones. They remained in their house for about 2½ -3 hours and after locking them in a room, they fled away along with the looted articles.

3. On this, police started investigation and arrested Narul Islam son of Muslim Maulik, Mohammad Hilal son of Abdul Samat, Abu Zaffar son of Tayab Ali, Rakib Holedar son of Isak Ali, Jamaal Holedar son of Abdul Haq Holedar, Kamrool son of Goni Holedar, Alamin Khan son of Sataar Khan, Mohammad Yunis son of Noor Mohammad and Wazid Ali son of Nazir Ali. All the accused were residents of Bangladesh except Mohammad Yunis and Wazid Ali. During investigation accused persons suffered their disclosure statements and recoveries were effected from them. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned trial Judge completed various proceedings of trial including framing of charge against the accused persons, recording of evidence of the witnesses and examination of accused persons under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, learned trial Court held all the 9 accused persons guilty and convicted them for commission of offence punishable under Sections 395 read with Section 397 of IPC and 342 of IPC and sentenced

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them thereunder on 02.04.2014.

5. Aggrieved of passing of the judgment of conviction and the order of sentence, 8 accused are appellants before this Court, by way of present two appeals, whereas accused Wazid Ali has not preferred any appeal.

6. Learned counsel for the appellants mainly contended that the appellants were awarded sentence of 10 years RI and payment of fine of Rs.1000/- under Section 395 read with Section 397 IPC and they have already undergone a period of more than 6 years while remaining in custody. They have already suffered much agony of law while remaining in custody and a lenient view on the point of sentence may be taken. However, learned counsel for the appellants did not contest the judgment of conviction.

7. Learned State counsel confirmed the period of detention of more than 6 years on the basis of latest custody certificate dated 26.11.2016 having been produced in the Court today. However, learned State counsel contended that appellants do not deserve any leniency as they were duly armed and entered the house of the complainant and had taken away all the valuable belongings of complainant and his family members while taking the course of law in their own hands. More so, the appellants are foreign nationals as they are residents of Bangladesh except accused Mohammad Yunis. Appellants do not deserve any leniency on the point of sentence and the appeal be dismissed in toto.

8. Having considered the submissions made by learned counsel for

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both the parties and appraisal of the record, this Court is of the considered view that learned trial Judge has rightly placed reliance upon the testimony of eye witnesses including complainant Mahinder Partap who appeared as PW-5. His testimony is duly supported by Rakesh Kumar (PW-1) and Vinod Kumar (PW-2) who are eye witnesses of the occurrence. The disclosure statements Ex. PR/1 to Ex. PR/8 made by the accused persons and recovery memos have been duly proved on the file during trial. The defence version is just a plea of denial which does not find support or corroboration and there is nothing to disbelieve the testimony of the complainant and eye-witnesses, who are also victims of this case and were in a position to identify the accused persons as the assailants remained in their house for more than 2 hours. Complainant and eye-witnesses were in a position to identify the assailants on the spot and thereafter in the Court as well. More so, eye-witnesses had identified the accused persons during identification parade. There is no ground to interfere with the judgment of conviction passed by the Court below. Resultantly, both the appeals filed by appellants against judgment of conviction stands dismissed.

9. As regards to the order of sentence, out of awarded sentence of 10 years RI under Section 395 read with Section 397 IPC, the appellants have already undergone more than 6 years of actual sentence while remaining in custody during investigation and trial of this case and suffered much agony of law. On this point, appellants certainly deserve to be dealt with little leniency because they have already undergone a considerable

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period of sentence awarded by the Court below and the order of sentence be modified to the extent that appellants shall undergo the period of sentence which they have already spent while remaining in custody during the investigation and trial. As such, the order of sentence is modified to the extent that the sentence awarded to the appellants is reduced to the one already undergone by them while remaining in custody and they shall be released from custody if not required in any other case.

10. Appeals stand partly allowed in above terms.

(SHEKHER DHAWAN)
JUDGE

November 29, 2016
mohan

Whether speaking/reasoned : Yes / No
Whether Reportable : Yes / No