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

1. CRA-S-224-SB-2005
Date of Decision : August 02 , 2017

Rakesh alias Chura and others

.... Appellants

Versus

State of Haryana

.... Respondent

2. CRA-S-358-SB-2005

Lakhwinder and another

.... Appellants

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. H.S.Bhullar, Advocate,
for the appellants.

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

SHEKHER DHAWAN, J.

Present two appeals are directed against the common judgment of
conviction dated 18.1.2005 and order of sentence dated 21.01.2005 passed

by learned Additional Sessions Judge, Panchkula, whereby the appellants were convicted and sentenced as under:-

Under Section	Sentence	In default
U/s 395 read with Section 397 IPC	to undergo Rigorous Imprisonment for a period of Seven years and to pay a fine of Rs.200/- each	to further undergo Simple Imprisonment for a period of One month each.
U/s 452 IPC	to undergo Rigorous Imprisonment for a period of Two years and to pay a fine of Rs.100/- each	to further undergo Simple Imprisonment for a period of 15 days each.

Both the sentences were ordered to run concurrent.

Therefore, both these appeals are being decided by this common judgment.

2. Facts relevant for the purpose of decision of the appeals; that process of law was set into motion on the basis of statement (Ex. PA) of Pawan Kumar (PW-2), which was recorded on 10.03.2002 at 6.30 AM. As per the complainant, on the intervening night of 9th and 10th March, 2002, 3–4 unknown young boys came and they knocked at the door of Ram Niwas, tenant and asked him to open the door. They pretended themselves to be the police officials. Ram Niwas did not open the door. Said persons then opened the door of room of Ram Niwas forcibly and then tied him from both hands. The goods lying in his room were scattered by them. Thereafter, they took Ram Niwas alongwith them and asked him to get the door of room opened where mother, father and grandmother of the complainant were sleeping. On hearing the noise of Ram Niwas, Sohan Lal, father of the

complainant, opened the door whereupon all the accused persons entered the room and one of the assailants gave *danda* blow on the head of Sohan Lal. They forcibly took gold ring of Sohan Lal, ear-rings of the mother and gold chain of grand-mother of the complainant. Some money was also taken out of the pocket of Sohan Lal. The goods lying in the almirah were scattered by the accused persons and the parents and grandmother as also Ram Niwas were confined in the room. Assailants got open the room of Deepak, brother of the complainant and after tying his hands, almirah, suitcase etc. were checked and the goods were scattered. On hearing the noise, Mahesh Kumar, another brother of the complainant, came out of his room and the assailants started snatching from him and also gave him *saria* blow on his head and snatched his gold ring. Two of the assailants then went to room of *bhabhi* of the complainant and cash of Rs.5,000/- was taken away. Complainant raised hue and cry, but the assailants fled away with the cash and jewellery. Sohan Lal and Mahesh were taken to Civil Hospital, Sector 6, Panchkula in injured condition.

3. On the basis complaint, Ex. PA, police started investigation. Accused persons were arrested. Recoveries of stolen articles were effected on the basis of disclosure statements made by the accused persons. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of

evidence of the prosecution witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, learned trial Judge held the appellants guilty and convicted them for commission of offence punishable under Sections 395 read with Section 397 and Section 452 IPC and sentenced them.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of present appeals.

6. Learned counsel for the appellants contended that the Court below has not considered the actual facts as well as legal aspects of the case. Accused persons have been falsely implicated in this case. They were not apprehended on the spot. No Test Identification Parade was carried out at any stage. Stolen articles were not having any identification mark and they were not got identified nor any proof of ownership was obtained during the investigation and still the Court below held the accused-appellants guilty. On this point, learned counsel for the appellants placed reliance on the judgment of this Court in **Tega alias Teg Parshad and others Vs. State of Haryana, 1999(1) AICLR 681.**

7. Learned counsel for the appellants further argued that no independent witness was joined at the time of alleged recoveries and the trial Court has relied upon the evidence which is legally not admissible.

8. While arguing on these points, learned State counsel contended that the complainant as well as both the injured witnesses have duly identified the accused persons on the spot and thereafter during the trial and

they had no reason to depose falsely against the accused-appellants. The stolen articles were identified by the witnesses and the learned trial Judge has rightly placed reliance upon the testimony of these witnesses. There is no ground for acceptance of the present appeals and learned trial Judge has already considered all the aspects while record judgment of conviction and order of sentence. The appeals are liable be dismissed.

9. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that complainant, Pawan Kumar (PW-2) reported the matter to the police vide statement Ex. PA immediately after the occurrence. He has duly supported and proved the prosecution case before learned trial Judge. He has not been proved to be liar on the basis of his cross-examination or any other material being available on the file. Apart from that, the prosecution case is based upon the testimony of PW-3, Sohan Lal and PW-4 Mahesh Kumar, who are injured and eye-witnesses of this case. They had seen the accused persons on the spot as the accused remained on the spot for considerable period. Thereafter, they had seen the accused-persons in the Court and identified them on that basis and there is no reason to disbelieve the testimony of these witnesses. Law on the point is also settled that if the accused persons remain in association of the witnesses for a considerable time and they are in a position to identify the accused persons on the spot and subsequently in the Court, no Test Identification Parade would be required in such like case because the concept of Test Identification Parade is to rule out such a

possibility. On this point, learned trial Judge has rightly placed reliance upon the judgment from Hon`ble Supreme Court in **Budhsen and anr. Vs. State of UP, AIR 1970 SC 1321**, wherein it has been observed as under:-

“7. Now, facts which establish the identity of an accused person are relevant under Section 9 of the Indian Evidence Act. As a general rule, the substantive evidence of a witness is a statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration...”

10. Similar matter was before Hon`ble Apex Court in **S.N. Dube Vs. N.B.Bhoir, 2000(1) R.C.R. (Criminal) 848**.

11. In the present case, the conduct of the injured-witnesses as well as eye-witnesses is quite natural and believable and there was hardly any distinction for discarding their evidence on the ground that their version was not believable. There is hardly any thing in the cross-examination of this witness creating any doubt about their identification on the spot and subsequently in the Court. These witnesses had no reason to falsely involve any of the accused-persons. The presence of injured and eye-witnesses in the residential home i.e., place of occurrence, on the date and time of the

incident, cannot be disputed in any way. They had no reason to depose falsely against the accused-persons whereas to allow the real culprits to go scot-free and probably because of these reasons, learned trial Judge has rightly relied upon the testimony of these witnesses and held the accused-appellants guilty.

12. As regards to identification of the stolen articles, the witnesses had long association with the jewellery articles as they had been using the same and it was their natural behaviour to identify the same on the basis of their long association being in possession of the jewellery articles to identify the same. They had rightly done so and the Court below has committed no error while relying upon the testimony of these witnesses on this point as well.

13. More so, injuries caused to both the eye-witnesses have been duly proved as per statement of PW-6, Dr. Suvir Saxena, Medical Officer, General Hospital, Panchkula. He proved the medico legal reports of Sohan Lal and Mahesh Kumar as Ex. PC and PD respectively. Apart from that, there is nothing to disbelieve the testimony of these witnesses and other remaining prosecution witnesses and the Court below has rightly placed reliance upon the testimony of prosecution witnesses and disbelieved the defence version.

14. In view of the above, learned trial Judge has rightly held the accused-appellants guilty for commission of offence punishable under Sections 395 read with Section 397 and Section 452 IPC and present

appeals against judgment of conviction is without any merit and stand dismissed.

15. As regards to the order of sentence, learned trial Judge has held the appellants guilty and convicted and sentenced *inter alia* under Section 395 read with Section 397 IPC for 7 years. Learned counsel for the appellants contended that the appellants are not habitual offenders and they are also in custody. Hence, a lenient view on the point of sentence be taken.

16. There is substance in the contention of learned counsel for the appellants and this Court is of the considered view that the sentence awarded to the appellants needs to be reduced from 7 years to 5 years under 395 read with Section 397 IPC . So ordered. Resultantly, the sentence awarded to the appellants is reduced from 7 years to 5 years under Section 395 read with Section 397 IPC with no change in default stipulation.

17. The appeals qua order of sentence are partly allowed in the above terms. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

(SHEKHER DHAWAN)
JUDGE

August 02 , 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes