

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

**CRA-S-2429-SB of 2010(O&M)
Date of Decision: 28.10.2017**

Sandeep Kumar & anr.

... Appellants

Versus

State of Haryana

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rahul Gautam, Legal Aid Counsel,
for the appellants.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J.(Oral)

Challenge in this appeal is to the judgment of conviction dated 1.09.2010, vide which the appellants were held guilty for committing offence punishable under Section 392 IPC as the charge against appellant No.2- Sunil Kumar @ Midha under section 25 of the Arms Act was not proved and he was acquitted of this charge as well as the order of sentence dated 04.09.2010 vide which both the appellants were sentenced to undergo RI for 5 years under Section 392 IPC along with fine of Rs. 5,000/- and in default thereof, further to undergo RI for 6 months. Additionally, appellant No.2-Sunil Kumar @ Midha was sentenced to undergo RI for 10 years for committing offence punishable under Section 397 IPC along with fine of Rs. 10,000/- and in default thereof, he was directed to further undergo RI for 1 year. Both the sentences imposed on appellant No.2-Sunil Kumar @ Midha were ordered to run concurrently.

Brief facts of the case are that on 31.8.2009, SI Sube Singh (PW-7) received an information regarding a firing incident which had taken place

on a liquor vend of Village Deban and the accused persons had robbed the cash box/galla of the owner of vend. On reaching the liquor vend, he found complainant Mukesh Kumar son of Tara Chand and recorded his statement that he is resident of Village Ram Rai, PS Sadar, Jind and is an agriculturist by profession. He is also a partner in a liquor vend at Village Deban. On 31.08.2009, at about 10.00 PM when he was present at the liquor vend, the employee of the liquor vend had gone to the restaurant opposite to liquor vend for taking dinner, two young boys aged about 23-24 years came there and started consuming beer in front of the liquor vend and also obtained some egg dish(crumbled) from the abutting shop owner. When one of the accused demanded one more bottle of beer, the complainant went inside the liquor vend and opened the camphor for taking out the beer, the second boy lifted the cash box from the liquor vend. In the meantime, the boy, who was wearing blue shirt, took out the country made pistol and shouted that if the complainant tried to raise the voice he will be eliminated. Thereafter both the assailants ran away along with the cash box. The complainant stated that the accused had looted the amount of Rs.10,000/- lying in the cash box on a pistol point. Accordingly, the FIR was registered and thereafter, the investigations were completed and the report under Section 173 Cr.P.C. was filed. Both the accused were arrested in the FIR No.600, dated 21.09.2009, under Sections 398/401 IPC and 25 of the Arms Act and during the interrogation accused-Sandeep Kumar suffered a disclosure statement regarding the offence committed by him along with co-accused Sunil Kumar @ Midha of robbing the complainant with his amount. The amount of Rs.43,00/- was recovered from Sandeep Kumar. Thereafter, the prosecution led its evidence and the trial Court convicted both the appellants for the

offences punishable under Section 392 IPC and appellant No.2-Sunil Kumar @ Midha was also held guilty for offence punishable under Section 397 IPC.

Learned counsel for the appellants has restricted his argument limited to the extent of challenging the sentence awarded by the trial Court and has not contested the appeal regarding the conviction of the appellants as per the judgment dated 01.09.2010.

Learned State counsel has filed the custody certificate in the Court today.

Learned counsel for the appellants submits that appellant No.1-Sandeep Kumar was aged 20 years at the time of occurrence and appellant No.2-Sunil Kumar @ Midha was aged 19 years and subsequent to the conviction, appellant No.1-Sandeep Kumar has already undergone the sentence of five years awarded by the trial Court as per the custody certificate and similarly appellant No.2-Sunil Kumar has undergone 6 years, 11 months and 24 days of actual sentence and 8 years and 17 days of total sentence including the remission. It is further submitted that maximum sentence awarded under Section 392 IPC of the appellants is 5 years and as such, both the appellants have already undergone the sentence of 5 years as awarded by the trial Court. It is further submitted that the minimum sentence awarded under Section 397 IPC should not be a rigorous imprisonment less than 7 years and appellant No.2-Sunil Kumar @ Midha has already undergone 6 years, 11 months and 24 days of actual sentence and 8 years and 17 days of total sentence including the remissions. As per the custody certificate dated 27.10.2017, he will be completing actual sentence of 7 years of minimum sentence as prescribed under Section 397 IPC on or before 3.11.2017.

It is further submitted that the appellants have already spent their

prime youth time in the judicial lockup. Therefore, it is prayed that by taking a lenient view regarding appellant No.2-Sunil Kumar @ Midha, his sentence may be reduced to the sentence already undergone by him.

Learned State counsel, on the other hand, on the basis of custody certificate, has submitted that the appellants are involved in other cases and are facing trial.

In reply, learned counsel for the appellants submits that appellant-Sandeep Kumar has already acquitted in the other FIRs as is depicted from the custody certificate and appellant No.2-Sunil Kumar @ Midha is either acquitted or has undergone the sentence awarded in the other FIRs. It is also submitted that FIR relates to the year 2009 and the petitioner have faced protracted trial for last 8 years.

Considering the fact that the appellants have already undergone substantive sentence and especially in view of the fact that appellant No.1 has already undergone the entire sentence, whereas appellant No.2 has undergone 8 years and 17 days of total sentence including remission, the order of sentence awarding 10 years RI to appellant No.2 is modified to the extent that the sentence awarded to appellant No.2-Sunil Kumar @ Midha is reduced to the sentence already undergone by him.

Considering the fact that the present appeal is being persuaded by the High Court Legal Services Authority as the appellants are very poor persons and appellant No.1 has already undergone entire sentence awarded by the trial Court and appellant No.2 has already undergone substantive sentence, the fine of Rs.5,000/- awarded by the trial Court under Section 392 IPC on each of the appellants as well as Rs.10,000/-on appellant No.2-Sunil Kumar @ Midha is also waived off. Appellant No.2-Sunil Kumar @ Midha

@ Midha shall be released on completion of 7 years of actual sentence i.e. on 03.11.2017, if he is not involved in any other FIR.

The appeal stands disposed of accordingly.

28.10.2017
monika

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No