

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: June 07, 2017

(i) + **CRL.A. 1/2015**

SANJAY MUKHIYA Appellant

Through: Mr. Amar Nath, Amicus Curiae
with Mr. Biswajeet Kumar Patra,
DHCLSC Panel Counsel

(ii) + **CRL.A. 2/2015 & CrI.M.(B) 320/2017**

SURAJ KUMAR MUKHIYA Appellant

Through: Mr. Amar Nath, Amicus Curiae
with Mr. Neeraj Bhardwaj,
DHCLSC Panel Counsel

(iii) + **CRL.A. 469/2015 & CrI.M.(B) 403/2017**

UMESH MUKHIYA Appellant

Through: Mr. Amar Nath, Amicus Curiae
with Mr. Neeraj Bhardwaj,
DHCLSC Panel Counsel

(iv) + **CRL.A. 504/2015 & CrI. M(B) 479/2017**

RANJIT Appellant

Through: Mr. Amar Nath, Amicus Curiae
with Mr. Jatin Rajput, DHCLSC
Panel Counsel

Versus

STATE

..... Respondent

Through: Ms. Neelam Sharma, Additional
Public Prosecutor for respondent-
State with SI Sandip Shrivastava,
Police Station Maurya Enclave,
Delhi

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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ORAL

1. The above captioned four appeals arise out of a common impugned judgment of 14th October, 2014, vide which appellants- *Sanjay, Suraj, Ranjeet and Umesh* have been found guilty for the offence under Section 395/34 IPC and they have been sentenced to rigorous imprisonment for ten years with fine of ₹10,000/- each with default clause. Trial court has also held appellant/accused- *Ranjeet* guilty for the offence under Section 397 IPC and has sentenced him to rigorous imprisonment for seven years but both the sentences awarded to appellant- *Ranjeet* have been directed to run concurrently. However, appellant/accused- *Ranjeet* has been acquitted for the offence under Section 27 of *The Arms Act*.

2. Since challenge to the impugned judgment and order on sentence by counsel for appellants in these four appeals is on similar grounds, therefore, with the consent of counsel representing both sides, these four appeals have been heard together and are being decided by this common

judgment.

3. The facts as noted in the impugned judgment are as under:-

“In her statement to the police, the complainant Smt. Veena Manchanda alleged that 03.05.2011 at about 3:30 PM she was alone at her above house and her servant Sanjay was sitting in the lobby while she was inside her room and was taking medicine after taking her lunch. She has further stated that the AC of her room was on and suddenly five persons entered her room while Sanjay remained sitting in the lobby. She has further stated that Suraj, Pradeep, Umesh, Ranjit and Amlesh entered her room: Umesh who was having red coloured chemical on his hands and tried to close her eyes on which she got afraid at the same time one of them stated “ise farsh par leta do” after which they pushed her on the floor and Pradeep, Suraj and Ranjeet started maar-peet with her while Sanjay removed the keys of the Almirah from the drawer of her bed and he along with Umesh and Amlesh started removing the cash and jeweleries kept in the almirah and when she objected, the accused Ranjeet showed her a knife and threatened her not to raise an alarm. She has further stated that Suraj pushed her neck towards the floor so that she is not in a position to see anything but in that process she gave a teeth bite on the finger of Ranjeet and blood started oozing out after which they took her near the bathroom and tied her hands and legs with chunnies while the others went to other rooms and removed two laptops make Sony and HP and after taking all the cash and jewellery, they all fled away from the spot but before that they also lifer her mobile phone and also cut the wire of the land line phone. She further stated that thereafter, she

somehow managed to free herself and opened the speaker of land line phone and informed her husband about the incident who at that time was at his shop. She has further stated that when her husband came home and checked the Almirah, he found the cash amount Rs.13 lacs, 15 to 20 tola jewellery, artificial jewellery, coins and some foreign currency and other articles missing. She has further informed the police that Sanjay was employed by them as servant for four days prior to the incident; Suraj and Amlesh had also worked in her house as servant and Pardeep was their Chacha who used to meet them (Suraj and Amlesh). She also informed the police that about two years back one Ganesh who was known to these accused, had also worked in her house as servant and these accused including Ranjeet and Umesh used to come to meet Ganesh and hence she knew the accused namely Sanjay, Suraj, Pradeep, Amlesh and Ranjeet prior to the incident.”

4. The appellants herein were put on trial for the aforesaid offences and on the strength of evidence of complainant (PW-13) and her husband (PW-12), Harjender Kumar (PW-20) a relative of complainant, SI Pukhraj (PW-22) and Inspector Bijender Singh (PW-23), trial court has while discarding the version of appellants-accused of false implication, held that the prosecution case stood proved against appellants-accused persons.

5. In paragraph No.121 of the impugned judgment, the details of recovered robbed articles have been spelt out and it has been specified as to from which appellant-accused, which of the robbed article was

recovered.

6. In pursuance to the production warrants issued against appellants, they have been produced in court in custody.

7. At the outset, it is submitted by learned counsel for appellants that appellants-accused are poor persons and they have families to support. They are the bread earner of their families and each one of them has been behind the bars for past seven years. It is submitted that no minimum sentence is provided for the offence under Section 395/34 of IPC and so, while taking a lenient view, the sentence awarded to appellants be reduced to the period already undergone by them and quantum of fine imposed upon appellants and also the sentence in default of payment of fine be suitably reduced.

8. On the other hand, learned Additional Public Prosecutor for respondent-State supports the impugned judgment and order on sentence and submits that the sentence awarded is just and appropriate.

9. Upon hearing and on perusal of evidence on record, I find that the impugned judgment is well merited but order on sentence needs to be varied. While taking into note the fact that appellants are poor persons and are in their twenties and as per their Nominal Roll, they are not previous convicts, the substantive sentence awarded to appellants for the offence under Section 395/34 IPC is reduced from ten years to seven years but the quantum of fine and period in default thereof is maintained. However, the sentence awarded to appellant/accused *Ranjit* for offence under Section 397 IPC is not interfered with and is maintained. If the

appellants have served out the modified sentence of seven years and have paid fine or have already undergone the period in default of payment of fine, then they be released forthwith, provided they are not wanted in any other case.

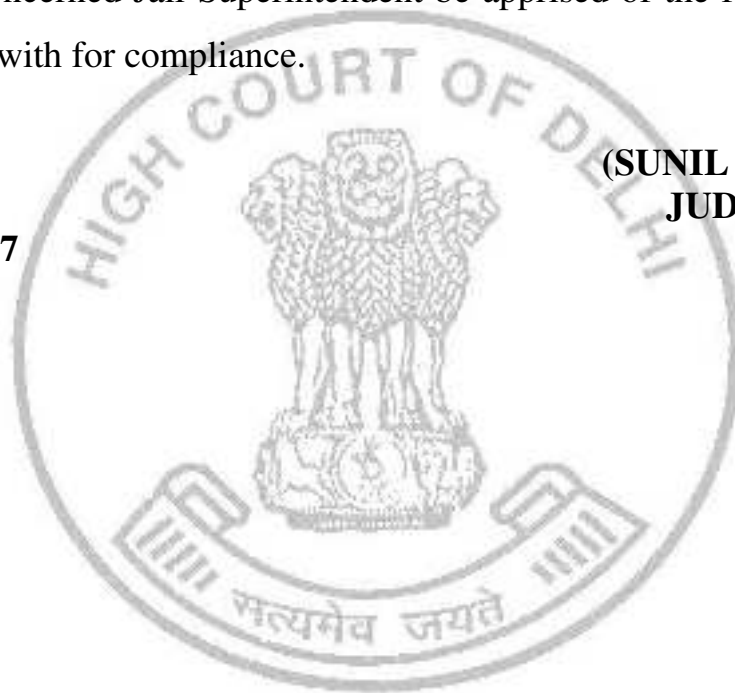
10. These four appeals are partly allowed to the extent indicated above.

11. The appeals and applications are accordingly disposed of.

12. The concerned Jail Superintendent be apprised of the fate of these appeals forthwith for compliance.

June 07, 2017

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**(SUNIL GAUR)
JUDGE**