

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

Criminal Appeal-S-1535-SB of 2011 (O&M)

Date of Decision: 16.10.2019

(1) Saleem son of Janab Ali
(2) Mubin son of Jaimal

..... Appellants

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sarfraj Hussain, Advocate for the appellants.

Mr. Saurabh Mago, Assistant Advocate General, Haryana
for the respondent/State.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed against the impugned judgment and order dated 20.05.2011 and 24.05.2011, respectively, passed by learned Additional Sessions Judge Rewari (*hereinafter referred as 'trial Court'*), vide which, both the appellants have been convicted and sentenced under Sections 395 and 342 of the Indian Penal Code, 1860 (*for short 'IPC'*) in the following terms:-

<i>Conviction Under Section(s)</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of payment of fine</i>
395, IPC	<i>Rigorous imprisonment for a period of <u>five years</u></i>	<i>₹ 1000/- each</i>	<i>Rigorous imprisonment for a period of <u>six months</u></i>
342, IPC	<i>Rigorous imprisonment for a period of <u>one year</u></i>	<i>₹ 250/- each</i>	<i>Rigorous imprisonment for a period of <u>one month</u></i>

Prosecution of the appellants was initiated on the basis of a written complaint dated 07.11.2010 (Ex.PA), made by Kailash Chand (PW-10), alleging that he is running a Petrol Pump in the name and style of Aravali Filling Station at Kund. Today i.e. 07.11.2010 in the night at about 12:30 AM, he received a telephonic call from his salesman to the effect that at about 12:00 AM, a white coloured Max vehicle came and got filled the diesel worth ₹ 500/-. Immediately thereafter, salesman-Virender (PW-13) was put in the vehicle and miscreants snatched the money from his pocket. Another salesman, namely, Lalan was confined in a room and he was also robbed while taking away the money from his pocket. The miscreants tried to break open the lock of Godrej Safe, but on failure, took away the same along with an amount of ₹ 1,96,000/-, lying therein and thereafter, put the Safe in their vehicle. The miscreants looted a total sum of ₹ 2,06,300/- including ₹ 10,300/- from both the salesmen. They were ten in numbers and out of them, nine were in the age group of 25 years, whereas one was of more than 40 years. From their dialects, they seem to be from Mewat area. The above facts were disclosed by both the salesmen. The looted amount was calculated after visiting on the spot and taking into consideration the cash details as well as totalizer of the cash machine. The miscreants remained at the Petrol Pump for about half an hour and during this period, no customer visited to get the fuel. Some of the miscreants were having country made revolver and remaining armed with *Rods*. In case identification parade is conducted, salesmen can identify them. On the basis of above complaint, police proceedings (Ex.PB) were conducted by ASI Suraj Bhan (PW-19) and a formal FIR No.252 dated

07.11.2010, under Sections 395, 342 of the IPC as well as Section 25 of the Arms Act, 1959 (Ex.PC) (*for short 'Arms Act'*) was registered at Police Station Khol, District Rewari. Thereafter, investigation started in the matter. Photographs (Ex.PE to PH) of the place of occurrence as well as rough Site Plan dated 07.11.2010 (Ex.PY) were prepared. On 07.11.2010, a telephonic information was received in Police Station Sadar Alwar to the effect that a Godrej currency chest, broken by gas-cutter, was lying under the Chirkhana bridge on Bhiwadi road next to Bus Stand in an abandoned condition, which was taken into possession by SHO, Sadar, Alwar under the provisions of Section 102 Cr.P.C. and an application (Ex.PT) was moved by him before learned Judicial Magistrate, Alwar in this regard for passing the necessary orders. Thereafter, on receiving information in Police Station Rewari, complainant along with police officials visited Police Station Sadar, Alwar and the Currency Chest was identified by the complainant, vide memo dated 08.11.2010 (Ex.PQ) and an order dated 09.11.2010 (Ex.PU) was passed by learned Judicial Magistrate, Alwar (Rajasthan) for handing over the Currency Chest to PW-19 ASI Suraj Bhan, Police Station Khol. The same was taken into police possession in this case, vide memo dated 09.11.2010 (Ex.PR) and a receipt in this regard was executed on 09.11.2010, which is Ex.PV. The Max Vehicle, used in the commission of crime, was also taken into police possession in this case, vide memo dated 18.11.2010 (Ex.PP). Appellant No.1-Saleem was interrogated by PW-7 ASI Vijaypal (the then Head Constable) in FIR No.187 dated 20.10.2010, under Sections 379 and 420, IPC, registered at Police Station Rampura and he revealed by way of disclosure

statement dated 03.12.2010 (Ex.PN) regarding his involvement along with other co-accused in the present case as well as other criminal cases and was taken into custody in this case also. Thereafter, he was interrogated in the present case by ASI Ved Parkash and suffered a disclosure statement dated 18.12.2010 (Ex.PW) and got demarcated the place of occurrence, vide memo (Ex.PS). Appellant No.2-Mubin was arrested on 11.01.2011 by ASI Sarjeet Singh (PW-17), upon interrogation, suffered a disclosure statement dated 11.01.2011 (Ex.PK) and in pursuance thereof, demarcated the place of occurrence, vide memo (Ex.PL) as well as got recovered the bundles of currency notes as Ex.MO1 and MO2 along with cheque (Ex.MO3) and Invoice (Ex.MO4), vide recovery memo (Ex.PM). Rough Site Plan dated 11.01.2011 of the place of recovery of Chest was prepared by ASI Sarjeet Singh as Ex.PX. Scaled Site Plan dated 09.02.2011 of place of occurrence (Ex.PO) was also prepared by Dharampal, Draftsman (PW-8). Statements of witnesses were recorded under Section 161 Cr.P.C. and after completion of the investigation, report under Section 173 Cr.P.C. was prepared and submitted before the Court of competent jurisdiction and copy thereof was supplied to the appellants. Since the offence under Section 395, IPC was triable by the Sessions Court, therefore, learned Illaqa Magistrate committed the case to Sessions Judge, Rewari and the same was assigned to learned trial Court. After taking into consideration the material available on record, learned trial Court, *prima facie*, found the commission of offences punishable under Sections 395, 342, IPC along with Section 25 of the Arms Act by the appellants and were charge-sheeted accordingly, to which, they pleaded not

guilty and claimed trial.

In order to prove the charges, prosecution examined following 19 witnesses:-

- PW-1 Rajinder Prasad, S.I./SHO, Police Station Khol;*
- PW-2 Desh Raj, Sub Inspector, Police Station Khol;*
- PW-3 Mukesh Kumar, Photographer;*
- PW-4 Bhagwan Singh, owner of Max vehicle;*
- PW-5 HC Raj Kumar;*
- PW-6 Rajesh, Additional Ahlmad;*
- PW-7 ASI Vijaypal;*
- PW-8 Dharampal, Draftsman;*
- PW-9 MHC Suresh Kumar;*
- PW-10 Kailash Chand, complainant;*
- PW-11 Constable Naresh Kumar;*
- PW-12 ASI Ved Parkash;*
- PW-13 Virender, Salesman;*
- PW-14 Lalan, Salesman;*
- PW-15 Sunil @ Sonu;*
- PW-16 Constable Mukesh Kumar;*
- PW-17 ASI Sarjeet Singh;*
- PW-18 ASI Bhisham Kumar;*
- PW-19 ASI Suraj Bhan*

PW-1 Rajinder Prasad, S.I./SHO, Police Station Khol deposed that after completion of investigation, he prepared the report under Section 173 Cr.P.C. in this case and presented the same before learned Illaqa Magistrate.

PW-2 Desh Raj, Sub Inspector deposed that on 07.11.2010, he was posted at Police Station Khol, on that day, he received a written complaint (Ex.PA), duly endorsed by ASI Suraj Bhan as Ex.PB, recorded formal FIR (Ex.PC) and made his endorsement (Ex.PD) thereon. Special report was forwarded to learned Illaqa Magistrate as well as senior police officers

through Constable Mukesh Kumar.

During cross-examination, this witness stated that he received the information at 05:00 AM and handed over the envelope to Constable Mukesh Kumar at about 05:45 AM.

PW-3 Mukesh Kumar, Photographer deposed that on 07.11.2010, he prepared the photographs (Ex.PE to Ex.PH) of the place of occurrence on asking of the police and which bear his signatures as well as seal of the Studio.

PW-4 Bhagwan Singh deposed that he is the owner of Max vehicle bearing registration No.HR-47-B-2296, which was stolen by unknown persons on 22.09.2010 and the same was released to him on *Superdari* by learned Judicial Magistrate 1st Class, Rewari, vide order dated 22.11.2010 (Ex.PJ).

PW-5 HC Raj Kumar deposed that on 11.01.2011, he was associated for investigation by ASI Sarjeet Singh. Appellant-Mubin made a disclosure statement Ex.PK and demarcated the place of occurrence, vide memo (Ex.PL). He also got recovered the bundles of currency notes (Ex.MO1 & Ex.MO2), cheque (Ex.MO3) and Cash Invoice (Ex.MO4), vide recovery memo (Ex.PM) from an open place near Luxmi Devi College, Chikani, District Alwar. This witness has specifically stated that it is the same cheque which was recovered at the instance of appellant-Mubin during investigation. Another slip (cash invoice) from the parcel was put to the witness and he identified the same as Ex.MO4, which had been got recovered at the instance of appellant-Mubin.

Although, during cross-examination, this witness stated that memo (Ex.PM) does not find mention about the details of currency notes as well as

number and banker of the cheque, but the denomination, quantity of currency notes, date of issue of cheque and the name of the payee have been duly mentioned in the memo. Further stated that name of the bank is also mentioned in the cheque (Ex.MO3) and currency notes were duly photographed. Also stated that place of recovery falls within the jurisdiction of Police Station district Alwar.

PW-6 Rajesh, Additional Ahlmad, Court of JMIC, Rewari brought the original case file regarding FIR No.187 dated 20.10.2010, under Sections 379 and 420, IPC, registered at Police Station Rampura.

PW-7 Vijaypal, ASI deposed that on 03.12.2010, he interrogated appellant-Saleem in FIR No.187 dated 20.10.2010, under Sections 379 and 420, IPC, registered at Police Station Rampura and during investigation, he suffered a disclosure (Ex.PN) regarding their involvement in the present case as well as other criminal cases.

PW-8 Dharampal, Draftsman, S.P. Office, Rewari deposed that on 09.02.2011, he visited the place of occurrence and prepared the Scaled Site Plan (Ex.PO) along with correct marginal notes, which bears his signatures.

During cross-examination, this witness stated that Scaled Site Plan (Ex.PO) does not bear the signature of Kailash Chand and Petrol Pump is situated on busy road i.e. State Highway No.26, leading from Rewari to Narnaul.

PW-9 MHC Suresh Kumar, P.S. Rampura deposed that on 18.11.2010, Max vehicle bearing registration No.HR-47-B-2296 was in police custody in connection with FIR No.187 dated 20.10.2010, under Sections 379,

420, IPC, Police Station Rampura and the same was taken into police possession by the Incharge, Police Post Kund, vide memo (Ex.PP) in pursuance of the orders of Court concerned.

PW-10 Kailash Chand deposed that he is the owner of Aravali Filling Station at Narnaul-Rewari road, Kund. On 07.11.2010, Virender and Lalan (PW-13 and 14), respectively were working as salesmen and on that day, at about 12:30 in the night, he received a telephonic call on his mobile from salesman-Virender that some miscreants had looted the currency chest along with ₹ 1,96,000/-, lying therein as well as ₹ 10,300/- from them. Salesman also disclosed that miscreants were in a white coloured Max jeep. When complainant reached at Petrol Pump, he was apprised about the entire incident and thereafter, he moved an written application (Ex.PA) to the police regarding the dacoity of ₹ 2,06,300/-. Salesman also disclosed that miscreants were of young age, using Mewati dialect and they were total 8-10 in numbers. On 08.11.2010, complainant was informed that Safe had been recovered by the police of Police Station Sadar, Alwar and he was asked to accompany them to identify the same. Consequently, he visited Police Station Sadar, Alwar and he identified the Safe, belonging to him, vide memo (Ex.PQ) and which was signed by him as well as HC Dinesh Kumar as attesting witness. The Safe was taken into possession in terms of memo (Ex.PR), signed by him as well as Malkhana Incharge, Police Station Sadar, Alwar. The Safe was taken into possession in terms of memo (Ex.PR), signed by him as well as Malkhana Incharge, Police Station Sadar, Alwar. It transpires that Safe had been opened by using a gas-cutter, but its locks were intact. On 18.12.2010, he

was associated in the investigation of present case by the Khol police, who had come along with accused-Saleem to get the demarcation of the place of occurrence and the same was done in his presence, vide memo (Ex.PS), signed by him as an attesting witness. The supplementary statement was also recorded by the police and this witness duly identified the articles i.e. Ex.MO1, MO2, MO3, MO4 as well as accused-Saleem, present in Court and also identified the chest (Ex.MO5).

During cross-examination, this witness stated that application (Ex.PA) was moved after calculating the total sale of petroleum with the help of totalizer. As a routine practice, sale-chart is prepared according to individual petroleum products on daily basis as well as reconciliation of the sale and cash collection is done in the evening by him with the assistance of Manager before leaving the Station. Approximate sale of petroleum products on daily basis is ₹ 3 Lakh within 24 hours. Sales compilation register as well as chart were not given to the police as they never demanded the same. Voluntarily stated that Superintendent of Police had seen the details of sale during that night. Further stated that he is having the residence at Rewari as well as Kund, but his family stays at Rewari. He does not carry the cash in the evening to home, rather the same is kept at Petrol Station overnight and straightway it is deposited with the State Bank of India, Branch Rewari. He candidly stated that collection details of cash including denomination etc. are not maintained by the staff. Seal at point 'A' on the label has been inscribed by the aid of stamp and which was not handed over by him to the police, rather it is still with him. The account number, mentioned at point 'B', is in his own

handwriting. On the date of occurrence, he had left the petrol pump at 11:30 PM after collecting the cash and he himself prepared the currency bundles (Ex.MO1 and Ex.MO2). The accounts of Petrol Station are maintained by the Manager, but he was not associated by the police as he was not present at that time. The Safe (Ex.MO5), bundles of currency notes (Ex.MO1 and Ex.MO2) were not taken on *Superdari* from the Court by him. Further stated that Safe (Ex.MO5) is about 4.5/5 quintal of weight and he had not shifted the same since its purchase. This witness denied the suggestions that he had wrongly identified the accused or that contents of Ex.PA regarding figures are concocted or that slips on the bundles have been pasted at later stage or that he is deposing falsely.

PW-11 Constable Naresh Kumar, Police Station Alwar deposed that on 07.11.2010, a Safe was deposited in *Malkhana* by Om Parkash, SHO, P.S. Sadar, Alwar, which was taken into possession under Section 102 Cr.P.C. after obtaining appropriate orders from Illaqa Magistrate. Copy of application, moved by SHO, P.S. Sadar, Alwar, along with description of Safe and case diary are Ex.PT. Safe was handed over to the officials of Police Station Khol for investigation in FIR No.252 in terms of order dated 09.11.2010 (Ex.PU), passed by learned JMIC, Alwar, which was taken into possession by ASI Suraj Bhan, Police Station Khol, vide memo (Ex.PR) and in token thereof, he signed a receipt (Ex.PV) in this regard and Safe was duly identified by Kailash Chand vide memo (Ex.MO5).

During cross-examination, this witness stated that today, he has not brought the relevant *Malkhana* register.

PW-12 ASI Ved Parkash deposed that on 18.12.2010, while he was conducting the investigation of the present case, appellant-Saleem was taken on production warrant and upon interrogation, he suffered a disclosure (Ex.PW) regarding his involvement and in pursuance thereof, got demarcated the place of occurrence, vide memo (Ex.PS).

During cross-examination, this witness stated that accused was interrogated in the Court compound, Police Post for about 2/2 ½ hours. He was taken to the Police Post in a muffled face. Accused was taken for demarcation on 18.12.2010 in the evening and at that time, Kailash Chand and his Salesmen identified that he was the same person, who participated in the occurrence.

PW-13 Virender, Salesman deposed that on 07.11.2010, he was present along with another salesman-Lalan (PW-14) at Aravali Filling Station. At about 12:00 PM in the night, when they were sitting in the Office, a Max vehicle came there and on asking of the occupants, he filled the diesel to the tune of ₹ 500/- in the said vehicle. When money was demanded, occupants of the vehicle, who were 8/10 in numbers, overpowered him. He was carrying ₹ 4300/- in his pocket, which were snatched by the miscreants and he was forcibly put in the vehicle and all of them got down. One person stayed back with him, whereas others went inside the Filling Station towards Lalan. At that time, Sunil @ Sonu, who had come from the adjoining Hotel for drinking water, also witnessed the occurrence. An amount of ₹ 2,06,300/- including ₹ 1,96,000/-, which was lying in the chest, were looted by the miscreants. They left towards Rewari in their vehicle, having number plate in Hindi,

therefore, he could not read the same, but the vehicle was having registration number of Rajasthan. He made a phone call at 100, intimated the police as well as owner of the Petrol Pump. He identified the Max vehicle, which was used in the occurrence, at Police Station Rampura. He candidly stated that five accused out of the total miscreants are present in the Court.

During cross-examination, he stated that accused present in the Court were not previously known to him and after the occurrence, he had seen them in the Court. He did not suffer any injury, but had some abrasions on his cheek and thus, could not medico-legally examined. Voluntarily stated that he was given leg as well as fist blows and a weapon was put on his temple. The occurrence lasted for 30-45 minutes. He also stated that there is a good sale of petrol/diesel at night time, but during that period, no vehicle had come. He did not make any effort to run away as he was put in the vehicle. There is a hotel adjoining to the Petrol Pump and 3/4 persons used to stay there. He had raised a noise, upon which, Sonu came, but he was also overpowered and made to sit in the Office. He cannot tell the exact denomination of the currency notes taken away from him, however, majority of notes were in the shape of ₹ 100/-. He denied the suggestion that he had wrongly identified the accused or that he was deposing falsely.

PW-14 Lalan deposed that he is working as a Salesman with Aravali Filling Station, owned by Kailash Yadav and Virender is his co-worker. On 07.11.2010, when both of them were at Filling Station, then at about 12 PM in the night, white Max vehicle came there. Virender went outside the Office to fill the diesel and when, he demanded money, was overpowered by the

occupants and forcibly put in the vehicle. Thereafter, miscreants came towards him and he was also overpowered at gun point and ₹ 6000/- along with mobile were snatched by them. The miscreants also snatched ₹ 4300/- from Virender and confined him in the adjoining room. Miscreants put the currency chest into the Max vehicle with the help of rope and cloth. During this period, none came from the neighbourhood; nor any other vehicle was there and all the miscreants fled towards Rewari side. Virender made a phone call at 100 number. Owner of the petrol pump was also intimidated. Two persons out of those miscreants are present in the Court and the witness specifically pointed out that the accused, wearing white shirt, gave him leg and fist blows and also pointed his pistol while demanding more money and key of the Safe. About two months back, the police had brought accused-Mubin for the purpose of identification and for demarcation of the place of occurrence, which was demarcated by him, vide memo (Ex.PL). He identified the Max vehicle in Police Station Rampura, which was used at the time of occurrence and he also identified the Safe (Ex.MO5), which was taken away from the Petrol Station by the miscreants.

During cross-examination, this witness stated that he had disclosed all the facts to the police as well as that the miscreants were pulling the currency chest with the aid of a rope and had taken the Sheet from him for this purpose. The witness is confronted with the contents of Ex.DA, where it is not so recorded. He had told the police that accused after committing the crime had again beaten him and demanded more money as well as keys, thereby putting him on gun point. Witness was again confronted with Ex.DA, where it

is not so recorded. The occurrence had lasted about 30 minutes. Accused gave him leg and fist blows, but there was no bleeding, although, his clothes got spoiled. He was having ample pain in the body and the same was disclosed to the police, but he was not medico-legally examined. Virender suffered more injuries as he was having bleeding and his clothes were blood-stained. Therefore, he went to the Hospital, owned by the owner of the Filling Station and provided medicines. He tried to escape. Volunteered that there was a man on adjoining *Dhaba* who had come to have water and he managed to slip from the window of the room, where he had been with him. Thereafter, accused kept guarding him and Virender did not try to run as he was confined in the vehicle by one of the accused.

PW-15 Sunil @ Sonu deposed that he is working on the Hotel, owned by Sanjay, near Aravali Filling Station. On 07.11.2010, he went to the Petrol Pump for drinking water at about 12:00 in the night. After reaching there, he noticed that a Max vehicle was standing at Petrol Pump and its occupants were putting the salesman-Virender inside of the vehicle. After noticing his presence, two of the miscreants caught him and made to sit him in Office at gun point. They put the Safe in Max vehicle with the help of ropes and cloths. He identified the accused, present in the Court, who had looted the petrol pump along with other miscreants.

During cross-examination, this witness stated that he is working in a Hotel, which is at the main Narnaul road. There were three employees in the Hotel and their duty hours are uptill 11-12 at night. His village is at a distance of 1.5 Km. from the Hotel. Sometime, he used to stay in the Hotel at night. He

denied the suggestion that he is a planted witness in this case. He had seen the accused first time in the Court after the occurrence and he denied the suggestion that he is deposing falsely.

PW-16 Constable Mukesh Kumar deposed that on 07.11.2010, while posted at P.S. Khol, was entrusted with Special Reports containing in the envelope for delivery to Illaqa Magistrate as well as to senior police officers and which were delivered by him without any delay.

PW-17 ASI Sarjeet Singh deposed that present case was entrusted him for investigation on 11.01.2011 and during interrogation, accused-Mubin suffered disclosure statement (Ex.PK). Further stated that in pursuance of the disclosure, he demarcated the place of occurrence, vide memo (Ex.PL) and also got recovered the currency notes as well as cheque, vide memo (Ex.PM). During testimony, this witness was shown two bundles of currency notes (Ex.MO1 and MO2) along with cheque (Ex.MO3), duly identified by him, which had been recovered from accused-Mubin. Rough Site Plan of recovery was prepared as Ex.PX by this witness in his own handwriting and which bears his signatures also.

During cross-examination, this witness stated that accused interrogated in the Police Station, which lasted for about one and half hour. He denied the suggestion that accused did not suffer any disclosure statement or that recovery is planted. He also denied the suggestion that Memos (Ex.PK, PL, PM and PX) are bogus or that he is deposing falsely or his investigation is tainted.

PW-18 ASI Bhisham Kumar deposed that on 18.11.2010, he was

entrusted with the investigation of this case and had taken into possession vehicle bearing registration No.HR-47-B-2296, vide memo (Ex.PP) after its transfer from FIR No.187 of 2010, P.S. Rampura. He also recorded the statements of witnesses, namely, Lalan and Virender, wherein they identified the vehicle involved in the occurrence.

During cross-examination, this witness denied the suggestion that he did not get the vehicle transferred from FIR No.187 of 2010 or that the paper-work is bogus and fabricated.

PW-19 ASI Suraj Bhan deposed that on 07.11.2010, he was working as Incharge, Police Post Kund and on that day, upon receipt of application (Ex.PA), made an endorsement (Ex.PB) and sent the same for registration of formal FIR. Thereafter, he visited the place of occurrence, prepared rough Site Plan (Ex.PY) and got the site photographed by Photographer Mukesh Kumar (PW-3). Further stated that on 08.11.2010, an information was received from Police Station Alwar to the effect that a currency chest was lying abandoned in their jurisdiction and the same was taken into possession under the provisions of Section 102 Cr.P.C. He along with Kailash Chand, complainant (PW-10) and HC Dinesh Kumar reached at Police Station Alwar. Currency chest was identified by the complainant, vide memo (Ex.PQ). After obtaining the appropriate order dated 09.11.2010 (Ex.PU) from the Court of ACJM, Alwar, it was got transferred, taken into possession, vide memo (Ex.PR) and a receipt (Ex.PV) was issued in token thereof. The case property was deposited with *Malkhana*, Police Station Khol. This witness recorded the statements of the witnesses, taken into possession the documents (Ex.PT and PU) and prepared

the rough Site Plan of place of recovery of Chest as Ex.PX.

During cross-examination, this witness stated that no other witness except Kailash Chand (complainant) was joined by him. He stated that application (Ex.PA) was received at Police Station and so long as, investigation remained with him, nothing incriminating had come against the accused, present in Court.

Prosecution after giving up PWs HC Dinesh Kumar, Constable Hans Raj and ASI Dharamvir Singh being unnecessary closed their evidence.

The entire incriminating material was put to the appellants under Section 313 Cr.P.C., but they denied the same and claimed innocence being falsely implicated, however, no defence evidence was led by them.

Learned trial Court, after taking into consideration the entire material available on record, found the appellants guilty for the offences punishable under Sections 395 & 342, IPC and sentenced them in the terms as mentioned above in opening para of this order, but acquitted them under Section 25 of the Arms Act.

It is contended on behalf of the appellants that there is no cogent evidence on record to prove the charges against them, rather they have been convicted merely on the basis of surmises and conjectures. Further contended that there are material contradictions in the testimonies of prosecution witnesses, which make the case wholly doubtful. Also contended that there is no recovery in pursuance of the alleged disclosure statements of the appellants, therefore, the same cannot be construed as substantive piece of evidence. Lastly contended that in case this Court is not convinced on the

merits of the case, the sentence of the appellants be reduced to the period already undergone by them in view of the facing the criminal proceedings for the last approximately nine years.

On the other hand, learned State Counsel has opposed the contentions raised on behalf of the appellants and submitted that there is sufficient material on record to prove the charges against them and thus, rightly convicted by learned trial Court for the offences punishable under Sections 395 and 342, IPC. Also submitted that the appellants do not deserve any leniency on the quantum of sentence keeping in view the fact that they have committed the heinous crime.

Heard learned Counsel for the parties and perused the paper-book.

As per the case of prosecution, there are three eye-witnesses in this case, namely, Virender, Lalan and Sunil @ Sonu (PW-13, PW-14 and PW-15), respectively and they have duly proved the occurrence on the basis of their unequivocal depositions, fully corroborated by other remaining witnesses including complainant (PW-10), Investigating Officer (PW-17) as well as registered owner (PW-4) of the Max vehicle, used in the commission of crime. As per the testimonies of the above eye-witnesses, the appellants along with other co-accused came at the Aravali Filling Station, run by Kailash Chand (PW-10), in a Max vehicle in the intervening night of 06/07.11.2010 at about 12:00 AM, got filled the diesel for ₹ 500/-, but one salesman-Virender (PW-13) demanded the amount, he was put in the vehicle and snatched ₹ 4300/- from his pocket. Another salesman-Lalan (PW-14) was also robbed while snatching an amount of ₹ 6000/- along with his mobile phone by the

accused including the appellants. They have also taken away the Godrej Safe along with an amount of ₹ 1,96,000/- lying therein in their vehicle, thus, they robbed the total sum of ₹ 2,06,300/- along with other articles i.e. Mobile and Safe on the National Highway in a daredevil manner. It has also come in the testimonies that the miscreants were total ten in numbers and the appellants along with other co-accused (co-convicts) have been duly identified by all three eye-witnesses as they remained present at the time of occurrence for about half an hour and even the Max vehicle, used by them in the commission of crime, was also a stolen one involved in FIR No.187 dated 22.10.2010, registered for the commission of offences punishable under Sections 379 and 420, IPC at Police Station Rampura, District Rewari. No doubt, the fire-arm was not recovered during investigation by the police, but Virender, salesman (PW-13) has specifically stated that weapon was put on his temple by one of the miscreants during occurrence. Even Lalan, another salesman (PW-14) has also stated in the similar terms before learned trial Court that at the gun point, he was overpowered and currency notes along with mobile were snatched from him. Again Sunil @ Sonu (PW-15) has also deposed on similar lines to the effect that two of the miscreants caught him and made to sit in the office at gun point and thereafter, they put the Safe in the Max vehicle with the help of ropes and clothes. Even the owner of Petrol Pump, namely, Kailash Chand (PW-10) has also corroborated the prosecution case as narrated in the complaint and identified the Currency Chest as Ex.MO5. ASI Sarjeet Singh, Investigating Officer (PW-17), has also proved the disclosure statements, memo of demarcation as well as recovery of currency notes (Ex.MO1 and

MO2) from appellant No.2-Mubin, Cheque (Ex.MO3), Invoice (Ex.MO4). The Chest containing the currency, belonging to the complainant-Kailash Chand, which had been looted by the miscreants, was duly recovered under Section 102 Cr.P.C. by the Alwar Police and thereafter, the same was taken into possession in the present case for the purpose of investigation in terms of order dated 09.11.2010 (Ex.PU), passed by learned Judicial Magistrate, Alwar. It has also been proved that keys of the Chest remained with the complainant and the same was opened by the miscreants with the help of a gas-cutter. The bundles of currency notes along with slip of Aravali Filling Station, recovered from appellant No.2-Mubin, were also identified and have been duly proved. Even a cheque, issued in favour of the Aravali Filling Station, was also recovered and that is also a relevant document in this case to connect the chain of circumstances. The Max vehicle bearing registration No.HR-47-B-2296, which was used by the appellants along with other co-accused was stolen by them and used in the commission of crime, was duly identified by the prosecution witnesses including its registered owner (PW-4). It has also come on record that said vehicle was released in favour of PW-4, being registered owner, on *Superdari*, vide order dated 22.11.2010 (Ex.PJ), passed by learned JMIC, Rewari.

Appellant No.1-Saleem was arrested in FIR No.187 dated 22.10.2010, registered for the commission of offences punishable under Sections 379 and 420, IPC at Police Station Rampura for theft of the above Max vehicle, which was used in the commission of crime and he suffered disclosure statement (Ex.PN) before PW-7 ASI Vijay Pal (the then Head

Constable) regarding his involvement in the present occurrence as well as other criminal cases. Thereafter, he was taken on production warrant and during interrogation by ASI Ved Parkash (PW-12), suffered disclosure statement (Ex.PW), attested by EASI Dharamvir Singh and Kailash Chand (PW-10). He also demarcated the place of occurrence, vide memo (Ex.PS).

Appellant No.2-Mubin was arrested on 11.01.2011 by ASI Sarjeet Singh (PW-17) and during interrogation, suffered disclosure statement (Ex.PK) and on the basis thereof, two bundles of currency notes in denomination of ₹ 100/- amounting to ₹ 20,000/- (Ex.MO1 and Ex.MO2) including a blank cheque (Ex.MO3) and one invoice (Ex.MO4) were duly recovered and taken into police possession, vide memo (Ex.PM). The Max vehicle bearing registration No.HR-47-B-2296, which was used in the crime, was also taken into police possession, vide memo (Ex.PP). Rough Site Plan showing the recovery of currency notes along with other articles was prepared by ASI Sarjeet Singh as Ex.PX. Immediately, after the occurrence, currency chest was found at an isolated place within the jurisdiction of Police Station Sadar Alwar and the same was also taken into possession by them under Section 102 Cr.P.C. while following due procedure. Record reveals that an intimation was received at Police Station Khol and chest was duly identified, vide memo (Ex.PQ) and it was found that currency notes worth ₹ 1,96,000/- lying therein were taken out by the accused including appellants after cutting the chest with the help of a gas-cutter as the key of the same was not with them, rather it remained with the complainant (PW-10). The photographs (Ex.PE to Ex.PH) of the place of occurrence have also been duly proved by

Mukesh Kumar, Photographer (PW-3).

In view of the facts and circumstances, discussed hereinabove, this Court is of the opinion that although there are minor discrepancies in the testimonies of some of the prosecution witnesses, but these are absolutely insignificant and the prosecution has proved the charges against the appellants beyond reasonable doubt. Thus, the conclusion drawn by learned trial Court is based on cogent evidence and after re-evaluation of the entire material available on record, this Court does not find any infirmity or illegality worth consideration with the findings of guilt recorded by learned trial Court against the appellants.

No doubt, learned Counsel for the appellants made a submission for taking a lenient view to reduce the sentence of the appellants for the period already undergone by them while raising the plea of facing criminal proceedings for the last almost nine years, but this Court is not inclined to accept the same in view of the sentence being commensurate with the gravity of the offence.

Now-a-days, the highways are the lifeline of the country and there should be a sense of security as well as safety instilled in the mind of the commuters for 24 hours and to thwart the element of scaredness emanating from such types of barbaric incidents, deterrence to the spoilers is necessary. Therefore, showing any type of leniency to the appellants would not only give a wrong message to the Society at large, but also frustrate the very idea of maintenance of rule of law. Hon'ble Supreme Court in a case reported as **(2010) 5 SCC 63, 'Ram Babu Versus State of Uttar Pradesh'**, while dealing

with an appeal arising out of a case of dacoity, committed in the year 1980, on the quantum of sentence, in para 22, observed as under:-

“It was submitted by learned counsel for the appellants that the incident is of 1980 and the appellants have already undergone half the sentence and their sentence be reduced to already undergone. We are not impressed by this submission. Dacoity is a daredevil act. Most of the time, a serious crime like dacoity is committed by unknown persons and it is very difficult to trace them and still difficult to secure their conviction. As a matter of fact, looking to the nature of crime and the manner in which the appellants looted temple properties, graver punishment was warranted. In any case, sentence of five years' rigorous imprisonment awarded by the trial court and confirmed in appeal by the High Court for the offence under Section 395 IPC calls for no interference.”

As a result thereof, there is no merit in the present appeal and the same is dismissed.

Since the sentence of the appellants was suspended by this Court, vide order dated 30.04.2018 and now with the dismissal of the appeal, the same stands revoked. In case, the appellants are on bail in terms of above order, they are directed to surrender before learned Chief Judicial Magistrate, Rewari within 30 days from the receipt of certified copy of this order. On failure, learned Chief Judicial Magistrate, Rewari is directed to take coercive steps for securing the custody of the appellants and they will serve the remaining portion of the sentence.

October 16, 2019

Gagan

**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>