

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

(1) Criminal Appeal-S-794-SB of 2012 (O&M)

Arsad son of Mangal
Iqbal son of Noordin
Tundu @ Ismail @ Islam son of Gudan
Mittal @ Akhtar son of Mangal

..... Appellants

Versus

State of Haryana

..... Respondent

(2) Criminal Appeal-S-937-SB of 2012 (O&M)

Jabba @ Javed

..... Appellant

Versus

State of Haryana

..... Respondent

Date of Decision: 16.10.2019

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.

This order shall dispose off the aforementioned two appeals
being identical on facts and law between the parties.

Both the appeals have been filed against the common impugned
judgment and order dated 13.12.2011 and 15.12.2011, respectively, passed

by learned Additional Sessions Judge Rewari (*hereinafter referred as 'trial Court'*), vide which, 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	Rigorous imprisonment for a period of <u>five years</u>	₹ 1000/- each	Rigorous imprisonment for a period of <u>six months</u>
342, IPC	Rigorous imprisonment for a period of <u>one year</u>	₹ 250/- each	Rigorous imprisonment for a period of <u>one month</u>

Prosecution of the appellants was initiated on the basis of a written complaint dated 07.11.2010 (Ex.PA), made by Kailash Chand (PW-3), 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-4) was put in the vehicle and miscreants snatched the money from his pocket. Another salesman, namely, Lalan (PW-13) 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.PZ) were conducted by ASI Suraj Bhan and a formal FIR No.252 dated 07.11.2010 (Ex.PF), under Sections 395, 342 of the IPC as well as Section 25 of the Arms Act, 1959 (*for short 'Arms Act'*) was registered at Police Station Khol, District Rewari. Thereafter, investigation started in the matter. Photographs of the place of occurrence as well as rough Site Plan 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.PK) 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.PB) and an order dated 09.11.2010 (Ex.PL) was passed by learned Judicial Magistrate, Alwar (Rajasthan) for handing over the

Currency Chest to ASI Suraj Bhan, Police Station Khol. The same was taken into police possession in this case, vide memo (Ex.PC) and a receipt in this regard was executed on 09.11.2010. 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.PH).

Co-accused/convict Saleem was interrogated by 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.PM) 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.PJ) and got demarcated the place of occurrence.

Another co-accused/convict Mubin son of Jaimal was arrested on 11.01.2011 by ASI Sarjeet Singh, upon interrogation, suffered a disclosure statement dated 11.01.2011 (Ex.PN) and in pursuance thereof, demarcated the place of occurrence as well as got recovered the bundles of currency notes as Ex.MO2 and Ex.MO3 along with cheque (Ex.PD) and Credit Slip/Invoice (Ex.PE), vide recovery memo (Ex.PO). Rough Site Plan (Ex.PAA) of the place of occurrence and Site Plan of the place of recovery of Chest were prepared as Ex.PAB. Scaled Site Plan dated 09.02.2011 (Ex.PAC) of place of occurrence was also prepared by Dharampal, Draftsman.

On 23.04.2012, another co-accused/convict, namely, Mubin @ Rama was taken on remand by S.I. Desh Raj and during interrogation, he

suffered a disclosure statement regarding his involvement in the present case and in furtherance thereof, demarcated the place of occurrence.

Appellants, namely, Tundu @ Ismail, Iqbal and Arshad were also interrogated on 14.07.2011 and during interrogation, they suffered their respective disclosure statements (Ex.PP, Ex.PQ and Ex.PR) regarding their involvement in the present case and in furtherance thereof, demarcated the place of occurrence, vide memos (Ex.PS, Ex.PT and Ex.PU), respectively.

Appellant Nos.4 and 5, namely, Mittal @ Akhtar and Jabba @ Javed were also interrogated on 05.08.2011 and 30.08.2011, respectively by ASI Sarjeet Singh and during interrogation, they suffered their disclosure statements (Ex.PV and Ex.PX) regarding their involvement in the present case and in furtherance thereof, demarcated the place of occurrence, vide memos (Ex.PW and Ex.PY), respectively.

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 16 witnesses who are as under:-

<i>PW-1</i>	<i>Subhash Chand, Record-Keeper;</i>
<i>PW-2</i>	<i>Rajpal, Ahlmad, Court of learned JMIC, Rewari;</i>
<i>PW-3</i>	<i>Kailash Chand, complainant;</i>
<i>PW-4</i>	<i>Virender, Salesman;</i>
<i>PW-5</i>	<i>Sunil @ Sonu;</i>
<i>PW-6</i>	<i>S.I. Desh Raj;</i>
<i>PW-7</i>	<i>Constable Mukesh Kumar;</i>
<i>PW-8</i>	<i>MHC Suresh Kumar;</i>
<i>PW-9</i>	<i>ASI Bhisham Kumar;</i>
<i>PW-10</i>	<i>ASI Ved Parkash;</i>
<i>PW-11</i>	<i>Constable Naresh Kumar;</i>
<i>PW-12</i>	<i>SI/SHO Ram Kishan;</i>
<i>PW-13</i>	<i>Lalan, Salesman;</i>
<i>PW-14</i>	<i>ASI Vijay Pal;</i>
<i>PW-15</i>	<i>H.C. Raj Kumar;</i>
<i>PW-16</i>	<i>ASI Sarjeet Singh</i>

PW-1 Subhash Chand, Record Keeper brought the original case file pertaining to FIR No.252 of 2010, under Sections 395, 392, IPC, Police Station Khol, decided on 20.05.2011.

PW-2 Rajpal, Ahlmad, Court of learned JMIC, Rewari brought the record of FIR No.187 of 2010, Police Station Rampura, under Sections 379 and 420, IPC, pending for 08.12.2012 for prosecution evidence.

PW-3 Kailash Chand deposed that he is the owner and running a Petrol Pump in the name and style of Aravali Filling Station at Narnaul-Rewari road, Kund/Majra. Virender and Lalan were working as salesmen. On 07.11.2010 at 12:30 AM in the night, salesman-Virender gave him a

telephonic call on his mobile that some miscreants had taken away the currency chest containing ₹ 1,96,000/- as well as currency notes of ₹ 10,300/- from them. Salesman-Virender also stated that assailants were in a white coloured Max jeep. When this witness reached at Petrol Pump, he was given the entire details of the occurrence. Consequently, he moved an application (Ex.PA) to the police regarding the loot of ₹ 2,06,300/-. Salesman also disclosed that miscreants were young in the age group of 20-25 years and were using Mewati dialect and were total 8/10 in numbers, armed with deadly weapons. On 08.11.2010, he received an information from the local police and on their asking, he accompanied the police officials to Police Station Sadar, Alwar and was told that Safe had been recovered by the police officials of Police Station Sadar, Alwar and he was required for the purpose of identification. He accompanied with the police officials of Police Station Khol with his keys to Police Station Sadar, Alwar. Upon reaching there, he identified the Safe and it was found that the same belongs to him and had been taken away from his Petrol Pump, which was opened by a gas-cutter, but the locks of the same were intact. He identified the chest (Ex.MO1), present in the Court. Memo was prepared regarding the identification of currency chest (Safe), which is Ex.PB and the same was signed by him as well as HC Dinesh Kumar as attesting witness. The chest was taken into possession in terms of memo (Ex.PC), signed by this witness as well as *Malkhana* Incharge, Naresh Kumar, Police Station Sadar, Alwar. On 18.12.2010, currency notes of ₹ 20,000/- on which the slip of his petrol pump was affixed and a cheque for an amount of ₹ 1 Lakh in favour of his petrol pump was recovered from

accused Saleem. This witness identified the cheque as Ex.PF and Credit Slip (Ex.PE), which are the same as were taken away by the miscreants. He also identified by the bundles of currency notes as Ex.MO2 and Ex.MO3, which were having slip bearing his account number with the State Bank of India and were taken away by the miscreants on 07.11.2010. His supplementary statements were also recorded by the police on 08.11.2010, 09.11.2010 and 18.12.2010.

During cross-examination, this witness stated that version given in the application (Ex.PA) was told by his salesmen-Virender Kumar and Lalan. He reached at the Petrol Pump after about 15 minutes on receipt of the information from Virender Kumar and he narrated the entire incident within half an hour and after verifying all the facts, police reached at the spot after about one hour of his arrival. Voluntarily stated that Superintendent of Police also arrived on the spot and he shown the register regarding sale of oil at the petrol pump and also shown the machine of totalizer regarding the sale on that day. Further stated that Sanjay Hotel is adjoining with his Petrol Pump and Sunil Kumar, who was working with the Hotel, was also present at the time of occurrence. Also stated that there were other workers in the Hotel, but on that day, Sunil Kumar was alone. After his arrival on the Petrol Pump, same was closed and that was opened after getting all the facts verified by the police officials. Sale of oil at the petrol pump in 24 hours was approximately ₹ 3 Lakhs in those days and the sale amount up to noon was used to be deposited in the bank account of the petrol pump and after noon time, all the sale proceeds remained in the currency chest. The sale amount after noon time used

to be calculated by him and his Manager-Om Parkash in the evening at about 6 PM. On that day, Manager was not present at Petrol Pump after 6 PM and he was called by him in the night time and he reached at the Petrol Pump at about 1:00 AM on 07.11.2010. Police reached at the spot after arrival of the Manager and before reaching the police, he along with his Manager calculated the sale amount of petrol pump. Manager has shown the Sale Register to the police, but his statement was not recorded by the police. Police remained at the petrol pump up to 6/7 AM and have recorded the statements of his salesmen-Virender, Lalan and Sunil Kumar. He further stated that Head Constable Dinesh Kumar told him about the a currency chest recovered by the police officials of Police Station Sadar, Alwar. One ASI, HC Dinesh Kumar and this witness started for Police Station Sadar, Alwar at about 9:30 AM in his Alto Car and reached there at about 12 Noon on 08.11.2010. They remained in Police Station Sadar, Alwar for about one hour. Thereafter, he accompanied the police officials to move an application in a Court situated at District Courts Complex at Alwar. The paint of currency chest has become fade due to passage of time and he identified that currency chest due to fade of its colour. The chest was having a system for putting the currency notes from upper side even if the chest remained locked and due to this, this witness identified the currency chest, which was taken into possession by the police officials of Police Station Khol from Police Station Sadar, Alwar at about 3 PM. Currency chest was carried in a Mahindra Tempo. After 18.12.2010, Investigating Officer joined him for investigation in this case on 14.07.2011 and thereafter, on arrest of the remaining accused. This witness specifically

stated that nothing was recovered from the accused present in the Court in his presence.

PW-4 Virender deposed that on 07.11.2010, he was present as a salesman along with Lalan at Aravali Filling Station. At about 12:00 in the night, they were sitting in the Office of Filling Station. In the meanwhile, a Max vehicle white colour came there and he came out of the office and on asking of the occupants, this witness filled the diesel to the tune of ₹ 500/- in the said vehicle. When this witness demanded money, then he was overpowered by the occupants of the vehicle, who were 8/10 in numbers. He was having ₹ 4300/- in his pocket, which were snatched by them and he was forcibly put in the Max vehicle. All of them got down and one person stayed back to him and others went inside the Filling Station towards Lalan. During the occurrence, Sunil @ Sonu, who had come from the adjoining Hotel for drinking water, also witnessed the occurrence and an amount of ₹ 1,96,000/- was lying in the chest and total amount of ₹ 2,06,300/- was looted by the miscreants and they have left towards Rewari in the Max vehicle. He made a call at 100 number and intimated the police as well as owner-Kailash Chand. This witness identified the Max vehicle when he was brought to the Police Station Rampura and it was the same vehicle, which was used in the occurrence. He stated that five accused out of those miscreants are present in the Court at the time of deposition.

During cross-examination, this witness stated that accused, present in the Court, were not previously known to him. No one had called him to identify the accused and he has identified them first time in the Court after the

occurrence. He was working at the Petrol Pump for the last one year prior to the date of occurrence and his statement was recorded by the police at about 6/7 AM on 07.11.2010. He further stated that no injury was caused to him, therefore, he was not medico-legally examined. Voluntary stated that he consumed the pain killer tablets from the hospital, run by the owner of the Petrol Pump. Lalan also did not receive any injury, therefore, he was not medico-legally examined. Miscreants remained at petrol pump for about 30/45 minutes. He further stated that Rewari-Narnaul is a very busy road and is a State Highway.

PW-5 Sunil deposed that he is working on the Hotel, owned by Sanjay near Aravali Filling Station. On 06.11.2010 in the midnight, he went to the Petrol Pump at about 12 in the night for drinking water. After reaching at Petrol Pump, he noticed that a Max vehicle was standing there and its occupants were putting the salesman-Virender in the Max vehicle. After noticing his presence, two of the miscreants approached him and made to sit him in the office on gun point. They put the cash chest in the Max vehicle with the help of ropes and clothes. This witness identified the accused, present in the Court, who robbed the petrol pump along with other co-accused.

During cross-examination, this witness stated that he is working in a Hotel at Majra revenue estate, which is adjoining to Aravali Filling Station. There were three employees at the Hotel, however, on that day, he was just alone. Hotel remains opened up to 11/12 midnight. His village is at a distance of 1.5 Km. from the Hotel. Sometimes, he used to go to home and sometime, stays in the Hotel at night. Further stated that there is every arrangement of

residence, food etc. at the Hotel where he is working. He was given 1/2 slaps by the accused. This witness had seen the accused first time in the Court after the occurrence and on that day, he had seen the accused at night from the distance of 30 feet.

PW-6 Desh Raj, S.I., Police Station Khol deposited that on 07.11.2010, he was posted at Police Station Khol and on that day, after receipt of application (Ex.PA) along with endorsement by ASI Suraj Bhan through HC Dinesh Kumar, he recorded formal FIR (Ex.PF) and also made his endorsement (Ex.PG). He also sent the Special Report through Constable Mukesh Kumar, No.908 to higher police officers as well as to Illaqa Magistrate.

PW-7 Constable Mukesh Kumar deposited that on 07.11.2010, he was posted at P.S. Khol and was entrusted with Special Reports containing in the envelopes for delivery to learned Illaqa Magistrate as well as other superior police officers and the same were delivered by him without any delay.

During cross-examination stated that he does not remember the time of entrustment of special report as well as delivery of the same to Illaqa Magistrate.

PW-8 MHC Suresh Kumar, Police Station Rampura deposited that on 18.11.2010, a Max vehicle bearing registration No.HR-47-B-2296, which was in the custody of police in connection with FIR No.187 of 2010, under Section 379, IPC, P.S. Rampura was transferred in the case under the Court orders and the same was taken into possession by Incharge, Police Post Kund in terms of Memo (Ex.PH), which was signed by him and H.C. Dinesh Kumar as attesting

witness. His statement was recorded by the Investigating Officer.

PW-9 ASI Bhisham Kumar deposed that on 18.11.2010, he was entrusted with the investigation of this case and during the course of investigation, he has taken into possession vehicle No.HR-47-B-2296 in terms of memo (Ex.PH), after its transfer from case FIR No.187 of 2010, P.S. Rampura, duly attested by MHC Suresh Kumar and HC Dinesh Kumar. He recorded the statements of witnesses, namely, Lalan and Virender, wherein stated that they have identified the vehicle involved in the occurrence.

During cross-examination, this witness stated that he did not get any memo of identification prepared in the presence of witnesses, Lalan and Virender when it was identified by them. He denied the suggestion that he did not get the vehicle transferred and the paper-work is bogus and fabricated.

PW-10 ASI Ved Parkash deposed that on 18.12.2010, investigation of the present case was entrusted to him and on that day, accused-Saleem was in custody in another case and he obtained his custody in the present case and arrested him. Upon interrogation, accused-Saleem suffered his disclosure statement (Ex.PJ), attested by EASI Dharambir, admitting his involvement in the present case.

During cross-examination, this witness stated that accused was interrogated in the Court Complex Police Post for about 2-2 ½ hours, but no independent witness was associated. He did not offer any test identification parade to the accused and he was taken to the Police Post in a muffled face.

PW-11 Constable Naresh Kumar deposed that on 07.11.2010, a Safe was deposited in the *Malkhana* by Om Parkash, SHO, Police Station Sadar,

Alwar, which was taken in custody under Section 102 Cr.P.C. by getting appropriate orders from learned Illaqa Magistrate, Alwar and the application in this regard is Ex.PK, moved by SHO, P.S. Sadar, Alwar along with its description and copy of case diary. On 09.11.2010, Safe was handed over to the officials of Police Post Khol as it was required by them for investigation in the present case bearing FIR No.252 of 2010, P.S. Khol, under Sections 395, 342, IPC. Copy of order, passed by learned JMIC, Alwar, in this regard is Ex.PL. Safe was handed over and taken into possession by the officials of Police Station Khol, vide memo (Ex.PC), which was attested by this witness as well as Kailash Chand (PW-3). A receipt was also prepared in this regard, which is Ex.PM and he identified the safe (Ex.MO1), which is the same as was handed over to the officials of P.P. Kund, vide memo (Ex.PC). His statement was also recorded by the police.

PW-12 SI/SHO Ram Kishan, Police Station Khol deposed that on 06.10.2011, after completion of investigation against the accused, he prepared report under Section 173 Cr.P.C. and presented the same before learned Illaqa Magistrate.

During cross-examination, this witness stated that he has not investigated the present case. Voluntary stated that he verified the facts of the case and thereafter, the accused were challaned.

PW-13 Lalan deposed that he is working as a salesman on Aravali Filling Station, owned by Kailash Yadav. Virender is his co-worker. On 06.11.2010 in the midnight at about 12 PM, he along with Virender was on duty at Filling Station. At that time, white Max vehicle came there and

Virender went outside the office to fill the diesel in that vehicle. When Virender demanded money for the diesel, then he was overpowered by the occupants and was forcibly put in the Max vehicle. Thereafter, miscreants came to this witness in the office and he was also overpowered at gun point and ₹ 6000/- along with mobile were snatched by them. He was wrongfully confined in the adjoining room and miscreants also snatched ₹ 4300/- from Virender Kumar. Miscreants put the currency chest into the Max vehicle with the help of some ropes and clothes and fled away towards Rewari. Sunil, a worker of the adjoining Hotel, was also wrongfully confined along with him in that room by the miscreants. A phone call was made at 100 number by Virender and owner of the petrol pump was also intimated. Five persons present in the Court were identified at the time of deposition. He went to identify the Max vehicle in Police Station Rampura, which was the same vehicle used in the occurrence. He identified the Safe (Ex.MO1).

During cross-examination, this witness stated that he has disclosed all the facts to the police that the miscreants were pulling the currency chest with the aid of a rope. He further stated that accused were not previously known to him and no test identification parade was conducted in his presence. The occurrence lasted about 30 minutes and he was given leg and fist blows, but he did not sustain any external injury; nor there was any bleeding. His clothes were not torn, but smudged with soil. He was having sufficient pain in his body and that was disclosed to the police, but he was not medically examined and he was not having any external mark of injuries. Virender suffered more injuries than him and his clothes were blood-stained. He went to

the Hospital, owned by the owner of the Filling Station and got medicines from there. He consumed general analgesic from the pump. Narnaul-Rewari road is having heavy traffic through out the night. He tried to escape. Voluntarily stated that there was a man on adjoining *Dhaba* who had come to have water and he managed to slip him from the window of the room in which they were wrongly confined. 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-14 ASI Vijay Pal deposed that on 03.12.2010, he was posted as Head Constable/Investigation Officer, Police Station Rampura and on that day, he interrogated accused-Saleem in connection with FIR No.187 dated 22.10.2010, P.S. Rampura, under Section 379, 420, IPC and accused suffered a disclosure statement (Ex.PM) regarding his involvement in the present case as well as many other cases, which was attested by Constable Ramesh and Constable Dharamender.

During cross-examination, this witness stated that no independent witness was joined during interrogation of accused-Saleem and no recovery or discovery of new facts were effected in pursuance of his disclosure statement (Ex.PM).

PW-15 HC Raj Kumar deposed that on 11.01.2011, he was associated in this case by ASI Sarjeet Singh and on that day, accused-Mubin son of Jaimal was interrogated in his presence and he suffered disclosure statement (Ex.PN) regarding his involvement in the present case. In pursuance of his disclosure, accused-Mubin got recovered currency notes bearing the slip

of Aravali Filling Station and cheque along with credit slip near Laxmi Devi College Chikani, Alwar and the same were taken into possession, vide recovery memo (Ex.PO), duly signed by him as attesting witness. Credit Slip is Ex.PE and Cheque is Ex.PD whereas currency notes are Ex.MO2 and Ex.MO3. Further stated that on 14.07.2011, accused Tundu @ Ismail, Iqbal s/o Noordin and Arshad s/o Mangal, present in Court, were interrogated in his presence by ASI Sarjeet Singh and during interrogation, they suffered disclosure statements (Ex.PP, Ex.PQ and Ex.PR), respectively confessing their involvement in the present case. All the memos bear his signature as well as of attesting witnesses. In pursuance of the disclosure statements, accused Tundu, Iqbal and Arshad demarcated the place of occurrence vide memo (Ex.PS, Ex.PT and Ex.PU), respectively. All the memos bear his signature as well as of attesting witnesses. On 05.08.2011, accused Mittal @ Akhtar, present in Court, was interrogated by ASI Sarjeet Singh and he suffered a disclosure statement (Ex.PV). In pursuance thereto, accused demarcated the place of occurrence, vide memo (Ex.PW), which bear his signature as well as of attesting witnesses. Thereafter, on 30.08.2011, accused Jabba @ Javed, present in Court, was interrogated by ASI Sarjeet Singh and he suffered a disclosure statement (Ex.PX) and in pursuance thereto, he demarcated the place of occurrence, vide memo (Ex.PY), which bears his signature as well as of attesting witnesses.

During cross-examination, this witness stated that neither any independent witness was joined during interrogation of accused; nor any recovery or discovery of new facts was effected in pursuance of the disclosure

statements (Ex.PP, Ex.PQ, Ex.PR, Ex.PV and Ex.PX). He candidly stated that the place of occurrence was already in the knowledge of Investigating Agency.

PW-16 ASI Sarjeet Singh deposed that he was deputed as Investigating Officer in this case and on 11.01.2011, accused-Mubin was interrogated and suffered disclosure statement (Ex.PN). In pursuance to disclosure, accused got recovered credit slip (Ex.PE), cheque (Ex.PD) and two bundles of currency notes bearing the slip of Aravali Filing Station as Ex.MO2 and Ex.MO3 near Laxmi Devi College, Chikani, District Alwar, which were taken into possession, vide memo Ex.PO, attested by HC Raj Kumar. Scaled Site Plan is Ex.PAC along with marginal notes of place of occurrence, prepared by him through HC Dharampal, Draftsman, which bears his seal as well as signature and his statement was also recorded under Section 161 Cr.P.C. On 14.07.2011, accused Tundu @ Ismail, Iqbal s/o Noordin and Arshad s/o Mangal, present in the Court, were interrogated in the presence of HC Raj Kumar and during interrogation, they suffered disclosure statements (Ex.PP, Ex.PQ, Ex.PR), respectively regarding their involvement in the present case. In pursuance to their disclosure statements, they got demarcated the place of occurrence, vide memos (Ex.PS, Ex.PT and Ex.PU), respectively. On 05.08.2011, accused Mittal @ Akhtar, present in the Court, was interrogated and during interrogation, he suffered disclosure (Ex.PV) and in pursuance thereto, demarcated place of occurrence, vide memo (Ex.PW). On 30.08.2011, accused Jabba @ Javed, present in the Court, was interrogated and during interrogation, suffered disclosure (Ex.PX) and in pursuance

thereto, demarcated place of occurrence, vide memo (Ex.PY), which was signed by EHC Rajesh Kumar and HC Raj Kumar as attesting witnesses. Accused were taken into custody. He identified accused Tundu, Iqbal, Arshad, Mittal @ Akhtar, Jabba @ Javed, present in the Court. Further stated that he has seen the rough Site Plan (Ex.PAA), Site Plan of place of recovery of currency chest (Ex.PAB), which was drawn by ASI Suraj Bhan, Incharge, Police Post Kund, duly endorsed by him. He has seen the memos Ex.PB, Ex.PC and Receipt Ex.PM, which are in the handwriting of ASI Suraj Bhan and bear his signatures. Endorsement (Ex.PZ) on the application (Ex.PA) is also in the handwriting of ASI Suraj Bhan and he had seen his writing as well as signatures, which are duly identified by him.

Prosecution has given up PWs HC Mukesh Kumar, HC Dinesh Kumar, Constable Hans Raj, ASI Dharambir, ASI Suraj Bhan, EHC Rajesh Kumar being unnecessary.

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, Sunil @ Sonu and Lalan (PW-4, PW-5 and PW-13), respectively and they have duly proved the occurrence on the basis of their unequivocal depositions, fully corroborated by other remaining witnesses including complainant (PW-3), Investigating Officer (PW-16) as well as registered owner 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-3), 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-4) demanded the amount, he was put in the vehicle and snatched ₹ 4300/- from his pocket. Another salesman-Lalan (PW-13) 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-4) has specifically stated that weapon was put on his temple by one of the miscreants during occurrence. Even Lalan, another salesman (PW-13) 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-5) 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-3) has also corroborated the prosecution case as narrated in the complaint and identified the Currency Chest as Ex.MO1. ASI Sarjeet Singh, Investigating Officer (PW-16), has also proved the disclosure statements, memo of demarcation as well as recovery of currency notes (Ex.MO2 and MO3) from co-accused/convict Mubin son of Jaimal, Cheque (Ex.PD), Invoice/Credit Slip (Ex.PE). 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.PL), 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 co-accused Mubin son of Jaimal, 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. It has also come on record that said vehicle was released in favour of its registered owner, on *Superdari*, vide order dated 22.11.2010,

passed by learned JMIC, Rewari.

Co-accused/convict 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 before 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, suffered disclosure statement, attested by EASI Dharamvir Singh and Kailash Chand (PW-3). He also demarcated the place of occurrence.

Another co-accused/convict Mubin son of Jaimal was arrested on 11.01.2011 by ASI Sarjeet Singh (PW-16) and during interrogation, suffered disclosure statement (Ex.PN) and on the basis thereof, two bundles of currency notes in denomination of ₹ 100/- amounting to ₹ 20,000/- (Ex.MO2 and Ex.MO3) including a blank cheque (Ex.PD) and one invoice/credit slip (Ex.PE) were duly recovered and taken into police possession, vide memo (Ex.PO).

Other co-accused/convict-Mubin @ Rama was taken on remand by S.I. Desh Raj on 23.04.2012 and upon interrogation, he suffered a disclosure statement regarding his involvement in the present case and in furtherance thereof, demarcated the place of occurrence.

Appellants, namely, Tundu @ Ismail, Iqbal and Arshad were also interrogated on 14.07.2011 and during interrogation, they suffered their

respective disclosure statements (Ex.PP, Ex.PQ and Ex.PR) regarding their involvement in the present case and in furtherance thereof, demarcated the place of occurrence, vide memos (Ex.PS, Ex.PT and Ex.PU), respectively.

Appellant Nos.4 and 5, namely, Mittal @ Akhtar and Jabba @ Javed were also interrogated on 05.08.2011 and 30.08.2011, respectively by ASI Sarjeet Singh and during interrogation, they suffered their disclosure statements (Ex.PV and Ex.PX) regarding their involvement in the present case and in furtherance thereof, demarcated the place of occurrence, vide memos (Ex.PW and Ex.PY), respectively.

The Max vehicle bearing registration No.HR-47-B-2296, which was used in the crime, was also taken into police possession. Rough Site Plan showing the recovery of currency notes along with other articles was prepared by ASI Sarjeet Singh. 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.PB) 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-3). The photographs of the place of occurrence have also been duly proved by Mukesh Kumar, Photographer.

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 appeals and the same are dismissed.

Since the sentence of appellant-Jabba @ Javed (in CRA-S-937-SB-2012) was suspended by this Court, vide order dated 25.11.2013 and now with the dismissal of the appeals, the same stands revoked. In case, appellant-Jabba @ Javed is on bail in terms of above order, he is 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 appellant-Jabba @ Javed and he 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>