

(2019) 08 CAL CK 0030

In the Calcutta High Court

Case No : Criminal Appeal (CRA) No. 78, 156 Of 2006, CRAN No. 371 Of 2018

SK. Rajjak Mollah And Others

APPELLANT

Vs

State Of West Bengal

RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 395, 397, 412, 495, 497
Code Of Criminal Procedure, 1973 — Section 161, 313, 328
Arms Act, 1959 — Section 25, 27
Explosive Substances Act, 1908 — Section 3, 4

Citation : (2019) 08 CAL CK 0030

Hon'ble Judges : Md. Mumtaz Khan, J; Jay Sengupta, J

Bench : Division Bench

Advocate : Apurba Krishna Das, Bapin Baidya, Himadri Kr. Mahata, Bhaskar Chakraborty, Kallol Basu, Anindya Sundar Das, Debabrata Samanta, Tarun Kr. Sur, Avipsa Sarkar, A.K. Maiti, Sukanya Bhattacharya, N.P. Agarwala

Final Decision : Disposed Off/ Dismissed

Judgement

Md. Mumtaz Khan, J

These appeals have been preferred by the appellants assailing the judgment, order of conviction dated November 28, 2005 and sentence dated November 29, 2005 passed by the learned Additional Sessions Judge 4th Court, Paschim Medinipur, in Sessions Trial Case No. XXXIV/April/2005 arising out of GR Case No. 2174 of 2004 thereby convicting the appellants for the commission of the offence punishable under Section 395 read with Section 397 of the Indian Penal Code (hereinafter referred to as IPC) and for the offence punishable under Section 412 of IPC as against the accused Sk. Saifuddin, since deceased (appellant in CRA 80 of 2006 which is already abated), Sk. Rajjak Mollah (appellant in CRA 78 of 2006) and Sk. Mintu (appellant No. 1 in CRA 156 of 2006) and sentenced them to suffer imprisonment of life and to pay a fine of Rs. 7,000/- each in default to suffer further rigorous imprisonment for two years each for the offence under Section 395 read with Section 397 IPC and in addition

to that accused/appellants Sk. Rajjak Mollah, Sk Saifuddin and Sk. Mintu were sentenced to suffer rigorous imprisonment for ten year each and also to pay a fine of Rs. 5,000/- each in default to suffer rigorous imprisonment for two years each for the offence under Section 412 of the IPC with a direction that sentences in respect of the above three convicts Sk. Rajjak Mollah, Sk. Saifuddin and Sk. Mintu shall run concurrently with a further direction of set off in terms of Section 328 of the Code of Criminal Procedure (hereinafter referred to as Cr. P.C.)

On December 19, 2004 at about 9.15 hrs., PW1 lodged a written complaint (Ext.1) at the Beldah P. S. to the effect that on last night at around 01.15 hrs. about 20/25 dacoits aged in between 25/26 years to 30 years armed with firearms, after breaking open the main door of the house, attacked them and looted away cash of Rs. 25,000/-(approx), five pairs of ear rings, one pair of bala, one pair of pala, four pieces of necklaces, one pair of bangles, four rings total weighing about 10/12 bhoris of gold ornaments and assaulted his brothers PW5, PW7 and their family members, destroyed the papers and documents kept in almirahs after breaking the same. They also charged bombs and left the house with the looted booty.

On the basis of the above written complaint, P.W.16 started Belda P.S. Case No. 149 dated December 19, 2004 under Sections 395/397 IPC, 25/27 Arms Act and sustains 3/4 of the Explosive Substance Act against 20/25 unknown miscreants and endorsed the case to PW 23 for investigation who then investigated the case. On his transfer the case was investigated by P.W. 24 who then on completion of investigation submitted charge sheet against the appellants.

On June 6, 2005 charges under Section 395 read with Section 397 IPC were framed against the accused/appellants including Sk. Saifuddin, since deceased and in addition to that charge under Section 412 IPC was framed against the appellants Sk. Rajjak Mollah, Sk. Mintu and accused Sk. Saifuddin and on their pleading not guilty to the charges, trial commenced.

Prosecution in order to prove the case examined 24 witnesses and also produced and proved FIR, rough sketch map with index, seizure lists, medical reports, reports of T.I. Parades, extract of GDE etc. and thereafter on completion of trial and on examination of the accused/appellants including accused Sk. Saifuddin under Section 313 Cr.P.C. learned Trial Judge passed the impugned Judgement.

During pendency of the appeal Sk. Saifuddin (Appellant in CRA 80 of 2006) died. Sk. Saifuddin being the only appellant as such appeal CRA 80 of 2006 stood abated.

Mr. Kallol Kumar Basu, learned Advocate appearing for the appellants Sk. Mintu and Sk. Kamrul @ Sk. Kamu (appellant nos. 1 and 3 in CRA 156 of 2006) submitted that the impugned judgment, order of conviction and sentence are not sustainable in law due to contradictions and embellishments in the statements of witnesses adduced before court and during investigation before police, FIR being silent as to the description and weight of the ornaments looted away that were

nor even disclosed to the police during investigation, delay as also irregularity in conducting test identification parade and prior to T.I. Parade photographs of the appellants being taken and shown to the witnesses, failure to produce any injury reports to support their claim of sustaining injuries during dacoity, even not stating to the doctors how they sustained injuries, absence of FSL report though some remnants of bomb reportedly seized, to establish the claim of use of any bomb during dacoity and failure to prove recovery and seizure of any looted booty by examining the reported seizure witnesses.

Mr. Apurba Krishna Das, learned Advocate appearing for the appellant Swapan Doloi @ Malua (appellant no. 2 in CRA 156 of 2002) while adopting the above submissions of Mr. Basu added that all the witnesses examined by the prosecution were the relatives and no independent witness was examined which casts doubt about the prosecution story, FIR was silent with regard to the claim that the ornaments looted away were of the customers mortgaged in lieu of money and even there was no mark of identification of the articles. Mr. Das further submitted that the appellant was in custody since the date of his arrest and he was not a history-sheeter and was of young age and since the date of incident fourteen years have passed and punishment awarded is disproportionate to the offence and extreme sentence punishment was awarded by the learned trial court upon the appellant which was not justified.

Learned Advocate appearing for the appellant Sk. Rajjak Molla (appellant in CRA 78 of 2006) submitted that FIR was lodged against 20/25 unknown miscreants but only appellants have been charge sheeted with ulterior motive, there was a delay of 17 days in holding the T.I. Parade and before the TI parade photographs of the appellants were shown to the witnesses. He also submitted that appellant was awarded extreme punishment provided under the section which was disproportionate to the offence and fourteen years have already passed since the date the incident and the appellant deserves leniency.

Mr. A.K. Maity, learned Advocate appearing for the State submitted that the prosecution case is based on the evidence of eye witnesses, PW1, PW2, PW4, PW5 and PW6 duly corroborated by PW 3, PW9 and PW11, the co villagers, who came immediately after the occurrence as also by PW 18 and PW19, the doctors who treated the injured eye witnesses. He also submitted that the eye witnesses duly identified the appellants during TI Parades conducted by the Judicial Magistrates P.W.12 and P.W.13 as also during trial before the court. According to Mr. Maity, prosecution has been able to prove the charges against the appellants beyond shadow of doubt and the learned trial judge was quite justified in passing the impugned judgment, order of conviction and sentence.

We have given our thoughtful consideration to the submissions of the learned Advocates appearing for the respective parties and have perused the evidence and documents on record to consider the propriety of the impugned judgment.

On perusal of the evidence of the prosecution witnesses on record, we find that

of the witnesses examined by the prosecution P.W.1, P.W.5 and P.W.7 are the brothers who reside in the same house in a joint mess with their families, P.W.6 is their mother, P.W.2 is the wife of P.W.7 while P.W.4 is the wife of P.W.5, P.W.3, P.W.9 and P.W.11 are the villagers and post occurrence witnesses who came at the spot immediately after the occurrence, P.W.8 is the mohuror of the mortgage business of the complainant and a post-occurrence witness who came on the next morning and heard about the incident and saw the injured and the broken almiras. He identified Mat. Ext.VI (gold chain) mortgaged by P.W.14 in lieu of money which was looted away by the dacoits, P.W.14 identified the Mat. Ext.VI to be the gold chain he had mortgaged in lieu of money for which a challan (Ext.11) was issued, P.W.10 has not stated anything about the incident and was merely tendered by the prosecution, P.W.12 and P.W.13 are the Judicial Magistrates who held T.I.Parades and prepared reports, P.W.15, P.W.21 and P.W.22 are the witnesses to the seizure of one gold finger ring, P.W.18 and P.W.19 are the doctors who treated the injured, P.W.20 is also residential medical practitioner-cum-owner of a Nursing Home who provided treatment to the injured, P.W.16 and P.W.17 are the then officers-in-charge of Belda P.S. and P.W.23 and P.W.24 are the investigating officers.

PW 1 is the FIR maker who lodged the complaint before P.W.16 in the morning of 19th, 2004 narrating the incident of dacoity committed by unknown miscreants at his house on the relevant night. In course of his examination before court he has given the vivid description of his house, the family members present in the house at the time of dacoity, name of the family members assaulted by the miscreants in course of dacoity, the places where from cash and ornaments were looted away by the dacoits and the steps taken by him at the time of such dacoity. He has clearly deposed that on the relevant night of December 18th/19th, 2004 at about 1.00/1.05 hours while he was sleeping in the house along with his wife and daughter, his brothers (P.W.5 and P.W.7) were sleeping in separate rooms along with their family members, his mother (P.W.6) and one maid servant were sleeping in the ground floor, then he heard noises of some persons talking just outside his house. They were using abusive languages and threatening them to open the door else they will break open the same. They were armed with fire arms, bhojoli, knife, etc. Those miscreants then broke open the main door and entered into their house. He shouted by raising alarm "dakot poreche". His mother and maid-servant woke up and out of fear went to the first floor. Dacoits then came on the first floor and broke open the door of the room of P.W.5, assaulted his son and mother and looted away cash of Rs. 10,000/- (approx), gold ornaments and other valuables from his room. By that time some of the dacoits entered into the room of P.W.7 and started assaulting his wife (P.W.2) and therefrom also they looted away cash of Rs. 12,000/-, and gold ornaments. Those miscreants could not enter into his room as he bolted his door from inside, so they locked the door of his room from out side by putting on Sikal (chain). They also broke the almiras which were lying in the ground floor. By that time when the villagers started arriving there, miscreants fled away with looted

booty by hurling bombs. The villagers entered into his house and removed the chain of the door of his room and then he came out from the room. He then found his brothers, their wives in injured condition due to assault by the miscreants. His mother was also limping as she was also assaulted. Though the villagers chased those dacoits but could not apprehend them as they fled by hurling bombs. The injured were then taken to the nearby nursing home 'Swarupananda Nursing Home' and after giving first-aid treatment on the following morning they were treated by PW18 and PW19. Thereafter, he lodged the complaint (Ex. 1). Police visited their house and seized one cemented pillar by which those dacoits had broken the door of their house (Mat. Ext.I), one wooden danda, shovel, iron rod (Mat. Ext. II) by a seizure list in his presence and also seized some splinters of bombs and two live bombs from outside of his house. He identified his signatures Ext.2/1 and 3/1 on seizure lists.

PW 2, wife of PW7 and an injured eye witness, too has deposed that on the night of December 18th/19th, 2004 at about 1.00 a.m. while she was sleeping along with her husband and daughter in the room they woke up hearing the sound of breaking the main-door of their house. After breaking the main gate miscreants hurriedly came on the first floor and entered into the room of P.W.5 and assaulted him and his wife and looted away cash and ornaments. Thereafter, they entered into her room, situated by the side of the room of P.W.5, and struck on the head of her husband with the butt of a small gun causing bleeding therefrom and also gave blow on his left hand by a bamboo stick causing fracture thereon. They even did not spare her child. She was also assaulted by them by an iron made shovel on her waist, slapped and given fists and blows by holding her hair. During the incident miscreants then broke open their showcase, almira and looted away one Manipuri gold made necklace, 3 gold chains with locket, two small chains of her female child, two finger rings, one on which name of her husband Asim was engraved, 4 pairs of silver made tora, one necklace of crystal stone having pomegranate colour with golden locket, silver made foot finger rings apart from a cash of Rs. 12,000/- from their room. She further deposed that those miscreants were 20/25 in numbers but only 5 had entered into their room. After taking of the cash and ornaments etc from their room they took away her female child from their custody along with her injured husband and confined her inside the room by bolting the door from outside. They also assaulted her mother-in-law and took away 4 churies (of bronze made with gold top). Since villagers started coming, those miscreants fled away while hurling bombs. She identified the appellants in course of her examination before Court clearly describing the role played by each of them in course of dacoity in their house. She also identified the appellants during the T.I. Parade (Exts.6, 7, 9 and 10). She even identified some of the recovered articles looted away in dacoity during T.I.P.

PW 4, wife of PW5 and the injured eye witness, has also deposed that she along with her husband, mother-in-law, brother-in-laws and their family reside jointly in the same house. There was a dacoity at their house in the mid-night of

December 18th/19th, 2004. On the relevant while they were sleeping in their respective rooms, then at about 1.00/1.30 a.m. on hearing sound of opening their main door they woke up and found 15/20 dacoits. Some 5/ 7 dacoits entered into their room and assaulted her and her husband and thereafter, by breaking open the almira of their room looted away one golden necklace, one pair of ear ring, one pair of bronze made bangle having golden top, one pair of red coloured bangle of pola ringed with gold wire, one gold made finger ring on which one white stone was affixed, one iron made Naya ringed with gold made wire, one nose pin affixed with pearl, one necklace made of crystal stones having gold made locket on it and cash of Rs. 15,000/-. She also deposed that on that night she recognized 5 dacoits in the light of the electricity of her room. She was treated by the doctor for the injury sustained by her due to assault. She identified all the appellants in course of her examination before court specifically stating the role played by each of them during the commission of dacoity. She also identified Mat. Ext, I & II used by the appellants/dacoits in course of the commission of the offence.

PW5 and P.W.7, brothers of PW1 and injured eye witnesses, have also narrated the incident of dacoity committed at their residence in the mid-night of December 18th/19th, 2004 specifying in details the role played by the dacoits during commission of dacoity and the cash and ornaments looted away from their house. They also identified the appellants to be the miscreants who committed dacoity, looted away cash and ornaments from their house by breaking almira. According to them, those dacoits/appellants assaulted them and their family members as result they sustained injury and were treated in the nearby nursing home. They have also deposed that they identified the appellants during T.I. Parade. From the reports of T.I. Parade (Exts.6, 7, 9 and10) it appears that P.W.5 attended the T.I. Parades held for all the appellants but P.W.7 attended T.I. Parade only in respect of appellants Sk. Mintu and Sk. Rajjak Mollah and identified them. According to him, he could not attend the T.I. parade in respect of other accused persons due to fracture of his left hand. PW 6, mother of the complainant, a 70 yrs old lady, has also deposed that there was dacoity at their residence on the relevant night and the dacoits looted away cash and ornaments from their house and broken down the almira and assaulted them and due to assault she sustained injuries on her feet and was treated at nearby nursing home. She identified Mat. Ext.V to be the broken pieces of her churi which was looted away by the miscreants. She, however, did not name the dacoits nor identified the appellants to be miscreants who committed dacoity.

Thus, we find that all the eye witnesses have been clear and consistent while describing the sequence of events that had taken place on the date of occurrence and nothing has been elucidated in their cross-examination to discredit their statements. Save and except P.W.1, who on seeing the dacoits to enter his house confined himself inside of his room out of fear and his aged mother (P.W.6), eye witnesses have duly identified the appellants during trial as also in the T.I. Parade being the persons who committed dacoity. Ext. 6, the report of T.I.P.

prepared by P.W.12, the Judicial Magistrate and Exts.7, 9 and 10, the reports of T.I.P. prepared by P.W.13, the Judicial Magistrate corroborates the claim of eye witnesses.

The above statements of eye witnesses also found corroboration from the post-occurrence witnesses P.W.3, P.W.9 and P.W.11 the co-villagers and the doctors P.W.18, P.W.19 and P.W.20. PW 3 has clearly deposed that on the relevant night there was a dacoity in the house of PW1 and he heard the cries "dackat poreche". He then went to the house of PW 1 and found other villagers there and saw the door of the house was broken and articles were scattered and the dacoits had already fled away. On query, PW 7, his mother and brothers narrated the entire incident and told them that the miscreants looted away cash, gold and silver ornaments after assaulting them. He also found PW.7, his wife, mother, younger brother in injured condition. PW 9 has also deposed that on the relevant night there was a dacoity in the house of PW1. On hearing about the dacoity they arrived near the house of PW1 and noticed presence of dacoits in their house and as such due to fear they could not go into their house. He heard sound of hurling of bombs. After arrival of police they went there and found several items scattered within their house and found bleeding injury on the head and fracture injury on the hand of PW 7 and also found bleeding injury on the feet of P.W.6. PW5 was also assaulted. By the time dacoits had already fled away. PW 11 has deposed that on the relevant when he came to learn that there was dacoity at the house of PW1, he asked his brother to proceed to the house of PW1 and informed I/C Jorageria under Belda P.S. over telephone and proceeded to the spot. On the way he heard sound of hurling bombs and noticed villagers were returning back due to hurling of bombs. After some time police came to the house of PW 1 and after arrival of police he also went there and then noticed P.W.2, P.W.4, PW5, PW6 and PW7 were in injured condition. He also noticed almiras in broken condition and various articles were lying scattered in the room. Injured were then taken to the nursing home for treatment. PW8 has deposed that PW1 and his brothers have business of mortgaging valuable goods like ornaments etc. in lieu of money and he acts as moharar of their business. On the following morning as usual when he came to the house of P.W.1 he learnt about the dacoity and saw the injured and also broken almiras. He further deposed that out the looted articles, the dacoits also looted away gold ornaments of four customers which were kept in mortgage.

PW 18, the then doctor of Khandroi BMCH, has deposed that on December 19, 2004 he examined PW2, PW4, and PW5 and issued prescriptions. He identified the prescriptions (Exts, 16, 17, 18 and 19) issued by him. PW 19, also a doctor, has deposed that he examined PW 7 on December 23, 2004 and P.W.5 on January 27, 2005 and prescribed medicines. He also identified the prescriptions (Exts. 20 and 21) issued by him. PW20, is practitioner of Alternative Medicine-cum-owner of Swarupananda Nursing Home who provided treatment to PW 5, PW 6 and PW7 at 2.30 a.m in the night of December 19 2004. He identified the prescriptions (Exts. 22, 23 and 24) issued by him.

Learned Advocates appearing for the appellants attempted to point out some contradictions and embellishments in the statements of the witnesses adduced before court and during investigation to the police officer. It is well settled that there are bound to be some discrepancies between the depositions of different witnesses when they speak in details and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. The normal course of human conduct would be that while narrating a particular incident there may occur minor discrepancies but such discrepancies will not render the prosecution case doubtful and discard the unimpeachable evidence of the eye witness. Even in the case of certain omissions in the recording of the statements of the witnesses under Section 161 Cr.P.C. by the police officer will not lead to rejection of an otherwise credit-worthy and acceptable evidence. In the matter of *Shyamal Ghosh vs. State of West Bengal*, reported in (2012) 7 SCC 646, it has been held by the Hon'ble Apex Court that court should examine the statement of a witness in its entirety and read the said statements along with the statements of other witnesses in order to arrive at a rational conclusion instead of reading statement of a witness in part or in isolation.

The learned trial court took into consideration the evidences of the complainant (P.W.1) and the injured eye witnesses P.W.2, P.W.4, P.W.5, P.W.6 and P.W.7, medical reports (Exts.16, 17, 18, 19, 20, 21, 22, 23 and 24) and the evidence adduced by the doctors P.W.18, P.W.19 and P.W.20, the reports of T.I.Parades (Exts.6, 7, 9 and 10) and the evidence of P.W.12 and P.W.13, the Judicial Magistrates, who held T.I. Parades, the evidences of P.W.3, P.W.8 and P.W.11, witnesses immediate after the occurrence as also the evidence of P.W.8.

It is evident from the evidence of above eye witnesses that they had fully corroborated the prosecution case and their statements-in-chief remained unshaken during cross-examination and nothing was brought on record to discredit them and as such there was no reason to discard their evidences. The evidence of above eye witnesses had also been fully corroborated by P.W.3, P.W.8 and P.W.11, the co-villagers and the witnesses immediate after the occurrence as well as by the doctors. After considering the lower Court's record, we do not find any substance in the submissions made on behalf of the appellants that the case of the prosecution is full of contradictions and embellishment in the statements of the witnesses which goes to the root of the case. Therefore, the impugned judgment need not require our interference on the above ground.

With regard to omission in the FIR, the descriptions and weight of the ornaments looted away in dacoity, we find that the FIR was not very specific with regard to the weight of each of the ornaments looted away but description of the ornaments and even total weight of the ornaments was very much there in the FIR. Evidently, FIR was lodged on the same date of the incident at 9.15 hrs in the morning, describing the nature of some of the ornaments and the amount of cash looted away. But imagining the situation where the entire family had to pass

through trauma due to daring dacoity by armed dacoits and causing injuries due to assault in the mid-night, mentioning in details the description of each and every articles and the weight thereof in such short period is not expected. It may also be true that in details the description and weight of the entire ornaments looted away was not mentioned in their statements recorded under Section 161 of Cr.P.C. but it cannot be a ground for disbelieving the above witnesses in view of the proposition of law that law would not expect mentioning of minute details either in FIR or in the statement under Section 161 of Cr.P.C. However, we find that the eye witnesses have been clear and consistent while describing the nature of the ornaments looted away and the cash and nothing has been elucidated in their cross-examination to discredit their statements. Therefore, the impugned judgment need not require our interference on the above ground.

Regarding question of credibility of the evidence of interested witness, it was observed by the Hon'ble Apex Court in *Sarwan Singh & Ors. vs. State of Punjab*, reported in (1976) 4 SCC 369 that even though an eyewitness might have belong to the group of the deceased and that witnesses came from one particular group was sufficient to show the interested nature of evidence. But it was not the law that the evidence of an interested witness should be equated with that of a tainted evidence or that of an approver so as to require corroboration as a matter of necessity. All that the Courts required as a rule of prudence, not as a rule of law, was that the evidence of such witness should be scrutinized with a little care and once such witness was scrutinized with a little care and the Court was satisfied that the evidence of the interested witness has a ring of truth such evidence could be relied upon even without corroboration. In the matter of *Alamgir vs. State (NCT, Delhi)*, reported in 2003 SCC (Cri) 165 it was also observed by the Hon'ble Court that reliability of a witness cannot be questioned on the ground that she is an interested witness. The test of creditworthiness ought to be the guiding factor.

In the instant case, we find from the evidence of complainant, P.W.1, and the eye witnesses P.W.2, P.W.4, P.W.5, P.W.6 and P.W.7 that they have fully corroborated the prosecution case and their testimony could not be impeached by the defence. The above statements of eye witnesses also found corroboration from the villagers who came to the place of occurrence immediately after the incident. In such circumstances, there was no reason to reject their testimonies made on oath. Furthermore, the time and place does not demand presence of any outside person in the house to witness the incident. Therefore, the impugned judgment need not require our interference on the above ground.

With regard to the question of delay and irregularity in conducting test identification parade of the accused persons as raised by the learned Advocates for the appellants, we find from the record that the miscreants were unknown to the victims and their complicity in the crime transpired during investigation. Accordingly, on the basis of source information they were arrested and placed in the T.I.P. Even some of the looted articles reportedly recovered during

investigation from some of the appellants which were also placed in T.I.P. In the matter of delay in holding TIP, it is well settled that no time limit could be fixed for holding a test identification parade. In the case of Anil Kumar vs. State of U.P. reported in (2003) 3 SCC 569, lapse of 47 days to conduct test identification parade was not considered sufficient to erase the facial expressions from the minds of witnesses. In the case at hand P.W.2, P.W.4, P.W.5 and P.W.7, the injured eye-witnesses, have categorically stated on oath that on the relevant night they identified the dacoits in the electricity light of their rooms and even vividly narrated the role played by each of them. Their such statements remained unshaken during cross-examination. It appears from the record that appellant Sk. Kamrul was arrested and produced before court on March 2, 2005 and on March 7, 2005 he was placed in TIP held by P.W.12 and he was duly identified by P.W.2, P.W.4 and P.W.5 (Ext.6). Appellants Sk.Rajjak Molla and Sk.Mintu were arrested and produced before court on December 25, 2004 and on January 6, 2005 they were placed in TIP held by P.W.13 and they were duly identified by P.W.2, P.W.4, P.W.5 and P.W.7 (Ext.7). Sk Saifuddin, since deceased, (Appellant in CRA 80 of 2006) was apprehended on January 30, 2005 and on February 3, 2005 his TIP was held by P.W.13 and he was identified by P.W.2, P.W.4 and P.W.5 (Ext.9). Appellant Swapan Doloi was arrested in connection with a case of Nanda Kumar P.S., East Midnapur and on the basis of production warrant he was produced before court on February 8, 2005 and he was placed in the TIP which was held on February 15, 2005 by P.W.13 and he was duly identified by P.W.2, P.W.4 and P.W.5 (Ext.10). So, the identification of the appellants, held within 15 days from their arrest and production before court, by the victims did not throw any doubt on the genuineness of identification parade taking into consideration the circumstances of looting of their cash, ornaments and other valuable articles on the relevant night by forcing their way in their house after breaking the main door and even assaulting them causing injuries on their persons. So, the plea with regard to genuinity of identification does not hold good. Therefore, the propriety of the impugned judgment cannot be questioned on the above ground.

Therefore taking into account the above circumstances, we find no difficulty in reaching to the conclusion that the conviction of the appellants under Sections 495/497 IPC was fully justified.

Regarding recovery and seizure of the looted articles from the possession of the appellants Sk. Rajjak Molla and Sk. Mintu, prosecution has relied on the evidence of P.W. 23 and the seizure lists (Exts.26 and 27). According to P.W.23, the investigating officer, on December 23, 2014 at 21.55 hours he received one telephonic information from his source that at village Palpara under Patashpur P.S. within East Mindnapore district looted booties in connection with this case would be distributed at late night. He then informed officer-in-charge, Belda P.S. (P.W.16) and being accompanied with the officer-in-charge and force left for Patashpur P.S., made requisition for police assistance for holding raid and thereafter at 02.05 hours on December 24, 2004 they held raid behind the house of Sk. Naju @ Najrul and arrested the appellants Rajjak Mollah and Sk. Mintu and

recovered and seized some gold and silver made ornaments including cash of Rs. 2000/- from the possession of appellant Rajjak Mollah in presence of witnesses by a seizure list (Ext. 26). At the same place he also recovered and seized some gold ornaments, silver made ornaments and broken pieces of bronze made churies from the possession of appellant Sk. Mintu in presence of witnesses by a seizure list (Ext. 27).

P.W.16, the then officer in charge of Belda P.S., has corroborated P.W.23 only with regard to holding raid and apprehension of appellants Rajjak Mollah and Sk. Mintu therefrom on December 24, 2004 but surprisingly, he has nowhere whispered relating to alleged recovery of any such articles or ornaments from the possession of either of Rajjak Mollah or Sk. Mintu as claimed by P.W.23. Furthermore, Ext. 26 and 27, the seizure lists, reveal reported seizure in presence of witnesses Suneja Bibi and Sk. Khairul Anam but neither of them was examined by the prosecution for the reason best known to the prosecution. P.W. 23, the investigating officer, has also admitted that he did not examine those seizure witnesses during investigation. Even the seizure lists are completely silent with regard to the specific part of the body of the persons alleged articles were found. There is also no whisper that after alleged seizure any seal and label was made. The seized articles were also not produced before P.W.23 for identification. All these makes the recovery and seizure doubtful. In such circumstances, there was no scope for the learned Court below to convict and sentence the appellants Rajjak Mollah and Sk. Mintu under Section 412 of IPC.

Therefore, our interference with the impugned judgment, the order of conviction and sentence of the appellants Rajjak Mollah and Sk. Mintu under Section 412 IPC is required on the above ground.

With regard to the alternative prayer of the learned Advocates for the appellants for modification of the sentence awarded to the appellants as being the harsher and disproportionate to the offence, we find from the record that the appellants were convicted and sentenced to suffer imprisonment for life and also to pay a fine of Rs.7000/- each in default to suffer further period of imprisonment of 2 years each for the commission of offence punishable under section 395 read with section 397 IPC. It also appears from the record that appellants and they have spent a considerable period in custody and nothing was brought on record to show that they are the habitual offenders and/or that it was not their first offence.

In the matter of Shahejadjkhan Mahebubkhan Pathan V. State of Gujrat reported in 2012(4) Crimes 309 (SC), the Hon'ble Supreme Court considering the poor condition of the accused person and as it was is first offence while upholding the conviction of the appellants under the NDPS Act modified the sentence from 15 years to 10 years and reduced the period of sentence from three years to six months in default of payment of fine of rupees 1.5 lakhs.

In the matter of Ram Sunder Mahto and others V. State of Bihar reported in

(2009)16 SCC 191, the Hon'ble Supreme Court considering the old age of the accused persons, the period elapsed since the offence took place and other circumstances while upholding the conviction of the appellants under section 395 of the Indian Penal Code reduced the sentence from five years as awarded by the High Court to three years.

Attention of this Court has not been drawn by the learned counsel appearing for the State towards any material on record to take a different view. Therefore, considering the circumstances placed before us on behalf of the appellants that they were of young age of 28/29 years at the time of commission of offence and it was their first offence and already fourteen years have elapsed since the time of commission of offence, we are of the view that appellants deserve lenient treatment.

In view of the matter, although we affirm the conviction under Section 395 read with Section 397 of the Penal Code, we reduce the sentence of the appellants Sk. Mintu, Swapan Doloi alias Malua and S. Kamrul alias Sk.Kamu (appellants in CRA No. 156 of 2006) and Sk. Rajjak Molla (appellant in CRA No.78 of 2006) which has been awarded by the learned trial court to rigorous imprisonment of 10 years each. The fine imposed and the default sentence awarded to them remain unaltered. We, however, set aside the conviction and sentence imposed upon the appellants Sk. Rajjak Molla and Sk. Mintu for the commission of the offence punishable under section 412 IPC and acquit them from the said charge.

These appeals are thus disposed of with partial alteration of the order of conviction and sentence as indicated herein-above.

Under the circumstances CRAN No. 371 of 2018 stands dismissed.

Copy of this judgement along with the lower court records be sent down to the trial court immediately by special Messenger for information and taking necessary action.

Urgent photostat certified copy of this judgement, if applied for, be given to the parties expeditiously upon compliance with the necessary formalities in this regard.