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

1. **CRA-S-57-SB of 2010**
Date of Decision : May 22, 2017

RajuAppellant.

Versus

State of U.T., Chandigarh ...Respondent.

2. **CRA-S-2806-SB of 2009**

SehzadAppellant.

Versus

State of U.T., Chandigarh ...Respondent.

3. **CRA-S-207-SB of 2010**

Gulab Appellant.

Versus

State of U.T., Chandigarh ... Respondent.

4. **CRA-S-397-SB of 2010**

Karan Singh Appellant.

Versus

State of U.T., Chandigarh ... Respondent.

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5. **CRA-S-3431-SB of 2011**

Union Territory, Chandigarh Appellant.

Versus

Balinder Kumar alias Chucha ... Respondent.

CORAM: HON'BLE MR. JUSTICE (DR.) SHEKHER DHAWAN

Present: Mr. B.S. Aulakh, Advocate
for the appellants (in CRA-S-57-SB of 2010,
and CRA-S-207-SB of 2010).
and for respondent in CRA-S-3431-SB-2011.

Mr. S.S. Toor, Advocate
for the appellant (in CRA-S-2806 of 2009).

Mr. Silak Ram Hooda, Advocate
for the appellant (in CRA-S-397-SB of 2010).

Mr. J.S. Toor, APP, U.T., Chandigarh.

SHEKHER DHAWAN, J.

Criminal Appeals bearing No. CRA-S-57-SB of 2010, CRA-S-2806-SB of 2009, CRA-S-207-SB of 2010 and CRA-S-397-SB of 2010, filed by the accused-appellants are directed against the judgment of conviction 7.8.2008 and order of sentence dated 10.8.2008 passed by learned Additional Sessions Judge, Chandigarh, whereby the appellants were convicted and sentenced as under:-

Name of the accused/ appellants	Under Section	Sentence	In default
Raju	Section 397 of Indian Penal Code (for short, “IPC”)	to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹25,000/-.	To further undergo rigorous imprisonment for a period of three months.

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Sehzad, Karan Singh and Gulab Singh	Section 392 IPC	to undergo rigorous imprisonment for a period of five years and to pay a fine of ₹15,000/- each.	To further undergo rigorous imprisonment for a period of two months each.
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Union Territory, Chandigarh has filed CRA-S-3431-SB of 2011 challenging the judgment dated 28.10.2009 passed by learned Additional Sessions Judge, Chandigarh, whereby the accused, Balinder Kumar alias Chucha was acquitted of the charge. Since all these five appeals arise out of common FIR No. 198 dated 20.9.2007 registered under Section 392, 395, 397 and 411 IPC at Police Station, Sector 3, Chandigarh, those are being disposed of vide this common judgment.

2. Facts relevant for the purpose of decision of the appeal; that on 20.09.2007, complainant Rattan Dass [PW-1] alongwith Pawan Kumar [PW-2] and Partap Singh had come to Chandigarh to sell their apple crop through commission agent, M/s J & K Fruit, Sector 26, Chandigarh. At about 9.00 PM, when they were free from business transaction and were going to Bus Stand, Sector 17, Chandigarh in a rickshaw, four boys had forcibly waylaid the rickshaw at a knife point. At that time, Rattan Dass was having ₹70,000/- cash in his bag along with other articles. Out of four boys, two caught hold of Rattan Dass and one boy put a knife on his neck and all the four boys snatched the bag containing currency notes of ₹70,000/- and other articles. There was ample street light on the spot and the complainant as well as Pawan Kumar and Partap Singh had seen the boys who were in the age group of 28-30 years and were of wheatish/dark

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complexion. After snatching the bag, the assailants fled away from the spot. On reporting the matter to the police, FIR (Ex.PN) was registered. During investigation, all the four accused persons were identified by PW-1, Rattan Dass, PW-2 Pawan Kumar and Partap Singh and they were arrested on 21.9.2007. On personal search, currency notes of ₹1,500, ₹22,000/-, ₹10,000/- and ₹14,500/- alongwith one visiting card from each of the accused were recovered and same were taken into police custody vide recovery memos Ex.PF, Ex. PG, Ex. PH and Ex. PJ respectively.

3. After completion of investigation proceedings, challan was presented in the Court for trial.

4. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of statements of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution evidence and the defence version on record, learned trial Judge held the appellants guilty and convicted and sentenced them vide judgment of conviction dated 7.8.2008 and order of sentence dated 10.8.2008, as detailed in para No.1 above.

5. Aggrieved of passing of judgment of conviction and order of sentence, the appellants are before this Court by way of separate appeals.

6. At the time of arguments, learned counsel for the accused-appellants contended that the appellants have been falsely implicated in this case. Alleged recovery of currency notes has also been planted upon them. Learned counsel for the appellants also contended that as per prosecution case, complainant, PW-1, Rattan Dass, PW-2, Pawan Kumar and Partap

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Singh were going on a rickshaw but the said rickshaw puller, who was an independent witness, has not been examined during trial. There are various discrepancies in the statements of prosecution witnesses, but those have been simply over-looked by learned trial Judge.

7. Learned counsel for the appellants further contended that no Test Identification Parade of the appellants was conducted and as such, the identity of the appellants itself was in dispute. More so, as per the prosecution case, PW-1, Rattan Dass and his associates were robbed of ₹70,000/- at a knife point, but there was no recovery of any knife during investigation. The prosecution is a planted version whereas the defence version is the correct version, but the same has not been considered by learned trial Judge in right perspective. As such, the appeals filed by the appellants be accepted and the judgment of conviction and order of sentence be set-aside and the appellants be acquitted of the charge.

8. Learned State counsel contended that the present case is based upon the testimony of PW-1, Rattan Dass who had identified the assailants on the spot and deposed before the Court that the appellants are the same persons who have waylaid the rickshaw and robbed him of ₹70,000/- at night time. His version is duly supported and corroborated by the testimony of PW-2, Pawan Kumar. The recoveries of currency notes effected from the possession of the appellants in the presence of witnesses establish the guilt of the accused and learned trial Judge has rightly held the accused-appellants guilty. The defence version is just a plea of denial and is without any basis.

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9. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that the prosecution case is based upon the testimony of PW-1, Rattan Dass who had specifically made statement during the trial that he was having currency notes of ₹70,000/- in his possession and he alongwith Partap Singh and Pawan Kumar, were going to Bus Stand, Sector 17, Chandigarh. At that time, he was robbed of the currency notes of ₹70,000/- on knife point. He had seen the faces of the assailants on the spot as there was street light and they were of the age of 28-30 years. He had also identified the accused persons immediately after the occurrence i.e., on 21.9.2007 when they were arrested by the police and recovery of currency notes was effected from them. Later on, he had identified the appellants during the trial in the Court below. Immediately, after the occurrence, he had reported the matter to the police vide Ex. PA. His version is supported and corroborated by testimony of PW-2, Pawan Kumar. Both the witnesses were put to cross-examination by learned defence counsel. A specific question was put to PW-2, Pawan Kumar in his cross-examination regarding identification of the accused and the said witness replied that he could identify all the accused and in the Court, he had identified all the accused successfully and observations to that extent was recorded by learned trial Judge. As such, it is not a case of disputed identity of the appellants.

10. Apart from that, learned trial Judge has placed reliance upon the testimony of PW3- HC Azad Singh, before whom recovered currency notes were deposited in the *Malkahana* alongwith motorcycles bearing

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registration Nos. CH-03-U-9245 and HP-14A-2981. PW5- Anurag Khurana was also examined to depose that he was running a fruit agency in the name and style of 'M/s J&K Fruit Agencies' at SCF No.2, Sabji Mandi, Chandigarh. On 20.9.2007, Rattan Dass, Pawan Kumar and Partap Singh had come to his shop for sale of their apples and they had received payment of ₹70,000/-, ₹45,000/- and ₹26,545/- respectively at about 8.00 PM. Thereafter, at about 8.30 PM on the same night, he received a telephonic call from Pawan Kumar that they have been robbed of. PW6-ASI Mohinder Singh had completed the investigation formalities including recovery of currency notes from the accused-appellants. The defence version is just a plea of denial which has rightly been discarded by learned trial Judge.

11. Learned trial Judge has rightly held the accused-appellants guilty and convicted and sentenced them finding no reason for Rattan Dass and Pawan Kumar to depose falsely against the appellants. The matter was immediately reported to the police. The recovery of currency notes was effected from the possession of the accused-appellants. PW-1, Rattan Dass and PW-2, Pawan Kumar had identified the assailants on the spot, thereafter at the time of effecting recovery of currency notes on the next day and subsequently at the trial stage. As such, there is no dispute about the identification of the appellants. Hence, learned trial Judge has rightly held the accused-appellants guilty. There is no merit in the submissions made by learned counsel for the appellants. All the four appeals filed by the appellants qua judgment of conviction stand dismissed.

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12. As regards order of sentence, appellant-Raju has been sentenced to undergo RI for 7 years under Section 397 IPC whereas, the remaining three appellants, namely, Sehzaad, Karan Singh and Gulab Singh have been sentenced to undergo RI for 5 years under Section 392 IPC. Learned counsel for the appellants contended that a lenient view on the point of sentence be taken as the appellants are not the previous convicts and as per custody certificates dated 4.2.2016 placed on record by learned State counsel, have remained in custody as under:-

Name of the accused/ appellants	Years	Months	Days
Raju	4	8	1
Sehzaad	1	9	10
Gulab Singh	1	11	10
Karan Singh	0	8	6

13. There is nothing against the appellants regarding their previous conviction in any such matter. As such, they deserve a lenient view on the point of sentence. Their appeals qua order of sentence are partly accepted and the substantive sentence awarded to the appellants is reduced to 3 years with no change in the default stipulation.

14. As regards **CRA-S-3431-SB of 2011**, Balinder Kumar alias Chucha was arrested in this case on 22.1.2008 solely on the ground that he kept the engine of motor-cycle in start position and when the main accused escaped from the spot, he helped them to flee away and that motor cycle bearing registration No. HP-14A-2981 was recovered from his possession. Pawan Kumar, who was a witness to the alleged recovery of the motorcycle from the possession of Balinder Kumar alias Chucha did not support the

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prosecution story and in his cross-examination, he deposed that Balinder Kumar was neither arrested in his presence nor motorcycle was taken into possession from Balinder Kumar. Learned counsel appearing for Union Territory could not point out any discrepancy warranting interference in the well reasoned judgment passed by the trial Judge. Thus, CRA-S-3431-SB of 2011 also stands dismissed.

14. Resultantly, Criminal Appeals bearing Nos. **CRA-S-57-SB of 2010, CRA-S-2806-SB of 2009, CRA-S-207-SB of 2010 and CRA-S-397-SB of 2010** filed by the accused-appellants are dismissed qua judgment of conviction and partly allowed against the order of sentence. The order of sentence is modified to the extent that the substantive sentence awarded to appellants, namely, Raju, Sehzaad, Gulab and Karan Singh is reduced to 3 years with no change in the default stipulation. The appellants were released on bail by this Court during the pendency of their appeals. Their bail/surety bonds are cancelled. They be arrested and sent to jail to undergo the remaining part of sentence. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

15. **CRA-S-3431-SB of 2011** filed by Union Territory, Chandigarh also stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 22, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes