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

**1. CRA-S- 2746-SB-2015
Date of Decision : April 03, 2017**

Jitender Kumar Appellant

Versus

State of Haryana Respondent

2. CRA-S-2873-SB-2015

Ravi Appellant

Versus

State of Haryana Respondent

3. CRA-S-3646-SB-2015

Ashok alias Shoki Appellant

Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE [Dr.] SHEKHER DHAWAN

Present Mr. Rahul Deswal, Advocate,
for appellant - Jitender Kumar.

Mr. J.S.Cooner, Advocate,
for appellant – Ravi.

Mr. Nitin Jain, Advocate,
for appellant - Ashok alias Shoki

Ms. Kirti Singh, DAG, Haryana,
for the respondent-State.

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SHEKHER DHAWAN, J.

Present three appeals are directed against the common judgment of conviction dated 15.5.2015 and order of sentence dated 16.5.2015 passed by learned Sessions Judge, Panipat, whereby all the accused-appellants were convicted and sentenced as under :-

Under Section	Sentence	In default
395 IPC	to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs.10,000/- each.	to undergo Rigorous Imprisonment for a period of six months.

2. Facts relevant for the purpose of decision of present three appeals; that on 7.8.2013, Raj Kumar Gupta, complainant of this case, who was working as a Cashier in a transport company – Rajdhani Cement Service, had withdrawn a sum of Rs.8,00,000/- from HDFC Bank. When he reached near Railway crossing while going to his office, one of the five persons standing on the road had hit a stone on the wind screen of his car when he was crossing a speed-breaker. The complainant stopped his car. Out of them, two boys immediately rushed towards the car and after opening the front door, started assaulting the complainant. One of them tried to snatch the bag containing cash. The complainant tightened his grip in order to frustrate the attempt of the assailants for snatching the bag. One of the assailants pulled the bag as well as the complainant out of the car. One of them hit a stone on complainant's head. The complainant then lost control over the bag and the assailants succeeded in snatching the bag and thereafter fled away from the spot with the bag on two motor-cycles towards village

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Pardhana. Police was informed and matter was investigated. During investigation, CCTV footage of the video camera installed in the premises of Harsh Adarsh High School, village Karad. Finding some clue from the said video footage, the Investigating Officer arrested appellant, Jatinder. On interrogation, accused Jitender Kumar confessed his involvement in the crime and disclosed the names of other accused persons. He made disclosure statement and also got recovered currency notes worth Rs.80,000/-. Remaining accused were also arrested and on interrogation, they also made separate disclosure statements and got recovered Rs.75,000/- and Rs.40,000/- and Rs.70,000/- respectively from accused Ashok, Ravi and Ankit [a Juvenile, who has been tried separately]. The recovered amount was taken into police custody and 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 statement 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 them for commission of offence punishable under Section 395 IPC and sentenced them vide order dated 16.05.2015 .

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

6. At the time of arguments, learned counsel for the appellants contended that the prosecution has not been able to prove the alleged

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offence against either of the accused if the prosecution story is taken at its face-value. The prosecution has mainly relied upon the testimony of PW-3 Sandeep, who was the eye-witness to the alleged occurrence, but at the trial stage, he has not supported the prosecution case at all. The prosecution remained unsuccessful when it examined PW-2 Ram Mehar, owner and Headmaster of Harsh Adarsh High School regarding CCTV footage. He had also not supported the prosecution case and simply stated that no police official met him to collect CCTV footage and this also falsifies the case of the prosecution. Raj Kumar Gupta, complainant [PW-5] though, supported the prosecution case in his examination-in-chief, but he had not supported the prosecution case in his cross-examination and if the statement of PW-5, Raj Kumar Gupta, is taken as a whole, which is the requirement of law, he can also not be relied upon so as to convict the appellants. The remaining witnesses are more or less formal and the learned trial Judge has completely ignored these material points while convicting and sentencing the appellants and the appeals be accepted.

7. Learned State counsel contended that the prosecution case is based upon the testimony of PW-5, Raj Kumar Gupta, complainant of this case, who had given the minute details of occurrence having taken place on 7.8.2013 and he had seen the accused-appellants at the time of occurrence and thereafter, he had specifically identified Ashok alias Shoki appellant in the Court and other assailants from the CCTV footage received from Harsh Adarsh High School. More so, the prosecution case is based upon scientific investigation having been done in this case as finger print impression of

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accused Ashok alias Shoki and Ankit were taken from the car of the complainant and the same were tallied with their specimen finger print impression as is evident from Finger Print Examination and Comparison Report [Ex. P12] of Finger Print Bureau, Madhuban. The currency notes worth Rs.80,000/-; Rs.75,000/-; and Rs.40,000/- were recovered from accused-appellants, Jitender Kumar, Ashok alias Shoki, and Ravi vide recovery memos Ex. PK/1, PL/1 and PO/1 respectively in the presence of recovery witnesses, Ved Parkash, Krishan Kumar, ASI Jiya Lal [PW-15] and Rajbir Singh [PW-12] and as such, the present appeals against judgment of conviction be dismissed.

8. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that learned trial Judge has rightly relied upon the testimony of Raj Kumar Gupta, complainant of this case and the Investigating Officer, Inspector Randhir Singh [PW-11], who have supported the prosecution case in toto. Though the testimony of Raj Kumar Gupta [PW-5] was somewhat at variance, but substantially, he was referring to same statement and identified the assailants. He had specifically identified Ashok alias Shoki appellant in the Court and also identified the remaining appellants before the Court though he could not name out them. The alleged amount, which was snatched from the complainant, was recovered from the possession of the accused-appellants, Jitender Kumar, Ashok alias Shoki, and Ravi vide recovery memos Ex. PK/1, PL/1 and PO/1 respectively which stands proved on the file as per testimony of ASI Jiya Lal [PW-15] and Rajbir Singh [PW-

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12]. The prosecution case is also proved on the file as per Finger Print Examination and Comparison Report [Ex. P12] of Finger Print Bureau, Madhuban. To the contrary, the defence version is just a plea of denial. Learned trial Judge has rightly held the accused-appellants guilty for commission of offence punishable under Section 395 IPC and all the appeals against the judgment of conviction stand dismissed.

9. As regard to order of sentence, learned counsel for the appellants has contended that the appellants have remained in custody for substantial period against awarded sentence of five years and they be ordered to be released by reducing the sentence to the period already undergone by them.

10. There is substance in the contention of learned counsel for the appellants and this Court is of the considered view that the sentence awarded to the appellants needs to be reduced from 5 years to 3 years under Section 395 IPC. So ordered. Resultantly, the sentence awarded to the appellants is reduced from 5 years to 3 years under Section 395 IPC with no change in default stipulation. The appeals qua order of sentence are partly allowed in the above terms. Learned trial Judge is directed to comply with this order forthwith under intimation to this Court.

(SHEKHER DHAWAN)
JUDGE

April 03, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes