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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. No. 103/2003

Date of Decision: 26th July, 2013

KHAIRATI RAM

..... Appellant

Through: Mr. D. P. Chopra, Advocate.

versus

THE STATE

..... Respondent

Through: Ms. Fizani Husain, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

:SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 27th January, 2003 and the order of sentence dated 28th January, 2003 arising out of Sessions Case No. 160/97 in case FIR No. 246/96 under Sections 328/379/468/471/34 of Indian Penal Code, 1860 (hereinafter, in short 'IPC') registered at Police Station Samaipur Badli, whereby the appellant along with his co-accused was held guilty of the aforesaid offences and was sentenced to undergo as under:

- (i) For offence under Sections 328/34 IPC, he was sentenced to undergo simple imprisonment for five years and also to pay fine of Rs.500/-, in default of fine to undergo simple imprisonment for ten days;
- (ii) For offence under Sections 379/34 IPC, he was sentenced to undergo simple imprisonment for two years;
- (iii) For offence under Sections 468/34 IPC, sentenced to undergo simple imprisonment for five years and a fine of Rs.500/-, in default of payment of fine to undergo simple imprisonment of ten days;
- (iv) For offence under Sections 471/34 IPC, sentenced to undergo simple imprisonment for five years and a fine of Rs.500, in default of payment of fine with simple imprisonment for ten days.

2. The prosecution's case as revealed from the report under Section 173 of the Code of Criminal Procedure is that on 1st April, 1996 Sh. Munna lodged a complaint with the police to the effect that he was working as a driver for last 5-6 months with New Delhi Ghaziabad Transport, 646 Shivaji Road, Azad Market on truck No. URB 1320. The owner of the truck, namely, Sh. Manmohan Singh had sent him with the aforesaid truck along with a helper-Sanjay with the instructions to reach Libaspur petrol pump, Jhandewalan and that one person who has booked the truck will meet him and the goods

have to be taken from Libaspur to Ghaziabad. Accordingly, he reached Jhandewalan petrol pump, GTK road Libaspur at 10:15 p.m. where one person aged about 40 years having dark complexion met him and told him that he has booked the truck. He made him and the conductor-Sanjay to eat and drink tea and eggs bhujia. Thereafter, they fell asleep. At about 4.50 a.m. when he gained consciousness, he found himself and Sanjay at GTK Road, Kundli. He informed the owner of the truck. On the basis of this complaint, a case was registered under Sections 326/379 IPC. Twice the case was sent untraced. Ultimately, the case was transferred to the crime branch. On 6th April, 1997 on the basis of secret information, Khairati Ram and Kanshi Ram were arrested. They made disclosure statement about the commission of theft of this case as well as of five other cases wherein they committed theft after administering intoxicating substance to the victims. Test identification parade of both the accused persons was conducted where they were correctly identified by the witnesses. In pursuance to the disclosure statement of the accused, a truck bearing a fake number plate was recovered from Baldev Singh. After completion of investigation, charge sheet was

submitted against both the accused persons. Charge for offences under Sections 328/379/468/471/34 IPC was framed against both the accused, to which they pleaded not guilty and claimed trial.

3. Prosecution examined 16 witnesses to substantiate its case. All the incriminating evidence was put to both the accused while recording their statement under Section 313 Cr.P.C. wherein they denied the case of the prosecution. According to them, they were innocent and falsely implicated in this case.

4. Accused Khairati Ram examined DW1-Chatar Pal Sharma who deposed that accused was picked up from his house on 3.4.1997. Vide judgment and order, as referred above, both the accused were convicted and sentenced separately. Feeling aggrieved by the aforesaid judgment, only accused Khairati Ram has preferred the present appeal.

5. I have heard Sh. D. P. Chopra, learned counsel for the appellant and Ms. Fizani Hussain, learned Additional Public Prosecutor for the State and have perused the record.

6. It was submitted by learned counsel for the appellant that Kanshi Ram was the principal accused and he did not prefer any

appeal and served the sentence. The appellant has no role in the entire sequence of events. He was nowhere in the picture. He was neither present at the time of booking of the truck nor when the truck reached Jhandawalan Petrol Pump. Kanshi Ram had booked the truck. Thereafter also when the truck was sold, the payment was also made to Kanshi Ram. Under the circumstances, the appellant has been wrongly convicted in the case. Even otherwise, the appellant has remained in jail for more than the period for which he was awarded sentence. As such, he be sentenced to the period during which he remained as under trial in this case.

7. Refuting the contention of learned counsel for the appellant, it was submitted by learned APP for the State that it was the appellant who had gone for booking of the truck. He was correctly identified in test identification proceedings. Moreover, after committing theft of truck belonging to Manmohan Singh, it was Khairati Ram who induced PW8-Baldev Singh to purchase the truck. In consequence thereof, the truck was purchased by him. Thereafter, at the instance of both the accused, the truck with forged number plate was got recovered. It was submitted that neither Manmohan Singh nor Munna

had any animosity with the accused for which reason they will falsely depose against him and identify him. Even Baldev Singh was on friendly terms with the accused- appellant as he was known to him for last 30 years. The accused had gone to his house for condolence as the wife of this witness had expired and at that time he asked him to purchase the truck and thereafter he took Baldev Singh to the place where the truck was parked and then the payment was made to Kanshi Ram. When the accused was arrested and his personal search was taken, tablets Serepax was recovered from his possession as well as from the co-accused. As per the testimony of the pharmacist, PW14 Rajbir Singh, Serepax is a sedative group tablet and is taken for sleep. If it is taken in large quantity then one can become unconscious. It was submitted that these tablets were given to Munna and Sanjay after mixing it with tea and egg bhujia, as a result, they become unconscious and then theft of truck was committed, which later on was recovered. Under the circumstances, it was submitted that the appellant and the co-accused were rightly convicted by the learned trial Court and the impugned order does not suffer from any

irregularity/infirmity which calls for interference, as such the appeal is liable to be dismissed.

8. PW1 Manmohan Singh was the owner of truck No. URB 1320. As per the record brought by Sh. S.P. Gupta, Sr. Assistant, ARTO Office, Ghaziabad, U.P.(PW12), the truck was registered in the name of Manmohan, s/o Mahinder Singh on 13th December, 1995. On 31st March, 1996 also it was in the name of Manmohan. PW1-Manmohan Singh unfolded that on 31st March, 1996 accused Kharati Ram came to his office at about 12 noon and he represented him that he was working as an orderly in some office in DESU and that a truck was needed to transport the goods from Delhi to Ghaziabad by a officer. A sum of Rs.200/- was paid by him as advance out of the transportation charges of Rs.1,000/-. He also instructed that the truck should be sent to petrol pump, Libaspur at 10 p.m. on the same day. As such, he sent truck No. URB-1320 at Libaspur petrol pump as per the instructions. He sent driver Munna and conductor Sanjay. Next day morning, he received a telephone call from his driver stating that he was given some intoxicating substance in tea and when he lost his consciousness, he was thrown on the road and the truck was taken

away by the person who had booked the truck. He also informed that the same person who came for booking met at Libaspur petrol pump. He identified Kharati Ram in Tihar Jail on 10th April, 1997 during test identification proceedings.

9. PW2 Munna deposed that he was working as driver in New Delhi-Ghaziabad Transport situated at Shivaji Road, Azad Market. On 31st March, he was instructed by his owner to take truck of Manmohan Singh having registration No. URB 1320 at Libaspur petrol pump. Helper Sanjay accompanied him. His employer also instructed him that one person would meet him who had booked the truck for Ghaziabad to transport the goods. At about 10:30 p.m. he reached at Jhandewalan where he met a person who resembled as accused Kanshi Ram who was having bilty of the company. He brought tea and egg bhujia. After taking the same when he asked to proceed, Kanshi Ram replied that he will bring labour to load the goods in the truck. By the time, Kanshi Ram returned after about 10 minutes, he and Sanjay became unconscious. At about 5 a.m. when he and Sanjay regained consciousness, they found themselves lying on the road near GTK road, Kundli. He was also having injuries on

his head and face. He found that the truck was missing. He then informed his employer Manmohan Singh who came there and then they went to the police station where his statement was recorded. He identified Kanshi Ram during test identification proceedings.

10. Munna and Sanjay were taken to H.R. Hospital where they were examined by Dr. A.Pathak-PW5 who deposed that they were brought with alleged history of consuming something and becoming unconscious. They were referred to EMO(M). He prepared MLC of both of them which is Ex.PW5/A and PW5/B.

11. On receipt of DD No. 11A, Ex.PW9/A SI Gurnam Singh reached Jhandewalan petrol pump at Libaspur where he met complainant Munna and recorded his statement Ex.PW2/A and got an FIR registered. He also got the factum of booking of the truck verified from the office of transport at Bara Hindu Rao. Since the accused could not be traced, as such the case was sent untraced.

12. Investigation of the case was transferred to Inspector Kharak Singh (PW16). He has deposed that on 6th April, 1997, on receipt of secret information, he organised a raiding party comprising of Inspector Chander Das, HC Dilbagh Singh, HC Surender and other

staff and the secret informer. On the pointing out of informer, both the accused Khairati Ram and Kanshi Ram were apprehended. They were arrested. From the personal search of accused Kanshi Ram, one HMT wrist watch, three tablets Serepax 30 besides his personal items were recovered. Similarly, from the personal search of accused Khairati Ram, one wrist watch and five tablets of Serepax, which were used by them for committing crime, were recovered. Both the accused persons made disclosure statement Ex.PW10/A and PW10/B and got recovered two trucks which was the case property of other cases. Proceedings for getting their identification was conducted and they were correctly identified by the witnesses during the test identification proceedings. Thereafter, they were taken on police remand. They took the police party to P.S. Geedar Bha. HC Sukhdev of Punjab Police was joined in the investigation. Then they took the police party to the house of Baldev Singh to whom the truck No. URB 1320 with changed number plate of HR-26-7761 was sold. The truck was produced by Baldev Singh which he had purchased for a sum of Rs.1,60,000/- from the accused. It was taken into possession vide memo Ex.PW8/A. They also got recovered a jeep which was the

case property of some other case. Owner of the truck produced the papers. After completion of investigation he submitted the challan. PW10 HC Surinder Singh, PW13 HC Sukhdev Singh, PW15 Dilbagh Singh were the members of the raiding party in whose presence recovery of the truck was got effected by the accused persons.

13. PW8 Baldev Singh purchased the truck in question and has deposed that Khairati Ram was known to him for last 30 years. Earlier, he used to ply a truck from Giddarwaha which he sold subsequently. Khairati Ram was also having a truck and he shifted to Delhi about 30 years ago. In January, 1996 his wife expired and after about one month Khairati Ram came for condolence and inquired about his truck and when he informed him that he has already sold the truck, he informed him that there was a dispute between two brothers who intend to sell a truck and he can get the same purchased very cheap. But he declined his offer then Khairati Ram left. After 5-7 days, Khairati Ram again came and took him to Dubwali to show the truck about which he had discussed earlier. Kanshi Ram was also present at Dubwali and he was introduced to him by Khairati Ram by stating that he was his friend and resident of Gurgaon. Khairati Ram

also told him that he was one of the owner of the truck No. HR 26 7761. He purchased the truck for Rs. 1,60,000/-. A sum of Rs.1,10,000/- was paid after 2-4 days after selling land to Kanshi Ram and agreement Ex. PW6/B was executed with Kanshi Ram regarding purchase of truck which was witnessed by Gurditta Singh and Harish Kumar. Balance sum of Rs.50,000/- was to be paid at the time of handing over the ownership documents of the truck after it was transferred in his name. He contacted both the accused persons number of times for handing over the documents and to receive the balance payment but they did not hand over the same to him. In the meantime, the police came and seized the truck from him at the instance of both the accused persons who were arrested by the police. The truck was seized by the police vide recovery memo Ex.PW8/A. The agreement Ex.PW6/B was also seized by the police vide memo Ex.PW8/B.

14. PW7-Sardar Gurditta Singh identified his thumb impression on the document Ex.PW6/B vide which Baldev Singh had purchased the truck from Kanshi Ram in persuasion of Khairati Ram for Rs.1,10,000/-.

15. PW6 Harish Kumar was working as a stamp vendor and deed writer. He had sold the stamp paper Ex.PW6/B to Baldev Singh and typed the same on 9th April, 1996.

16. Aforesaid evidence led by the prosecution amply proves the role played by the accused, inasmuch as, it was he who had gone for booking of the truck on 31st March, 1996 and paid a sum of Rs.200/- as advance towards transportation charges. On his instructions, the truck was sent by PW1 Manmohan Singh through his driver Munna and helper Sanjay. It has come in the examination of this witness that Khairati Ram was not known to him prior to the booking of the truck. He duly identified him during test identification proceedings conducted by Metropolitan Magistrate at Tihar Jail on 10th April 1997. There is no reason as to why he will falsely depose regarding the booking of the truck by this accused and would correctly identify him, not only during the test identification proceedings but also in Court. In pursuance to the booking of the truck by appellant, truck was sent by Manmohan Singh. According to Munna Lal, accused Kanshi Ram met him at Libaspur petrol pump Jhandewalan and asked him and Sanjay to take tea and egg bhujia. After taking the same,

they became unconscious and when they gained consciousness they found themselves at GTK Road, Kundli. He correctly identified Kanshi Ram, not only during test identification proceedings but also in the Court. No animosity, ill-will or grudge has been alleged against him for which reason he will falsely implicate him.

17. Thereafter, on the basis of secret information, both the accused were arrested and in pursuance to their disclosure statement, truck bearing fake number plate, the case property of this case was got recovered from Baldev Singh to whom it was sold. The accused Khairati Ram was also known to Baldev Singh for the last 30 years and they were having good relation. It was Khairati Ram who persuaded Baldev Singh to purchase the truck by introducing Kanshi Ram as his friend and as owner of truck No. HR-26-7761. The mere fact that the payment was made to Kanshi Ram does not lessen the liability of Khairati Ram because had he not persuaded Baldev Singh to purchase the truck, he would not have purchased the truck with forged number plate.

18. The connivance of both the accused is manifest from the evidence on record. Not only in this case was the vehicle stolen after

administering stupefying substances, when they were arrested they were found in possession of number of Serepax tablets which according to pharmacist Rajbir Singh, if taken in large quantity, can cause unconsciousness. The entire evidence was correctly appreciated by learned Additional Sessions Judge and the appellants were rightly convicted for the offences against them. The impugned order dated 27th January, 2003 does not suffer from any infirmity which calls for any interference.

19. Coming to the quantum of sentence, although for all the offences the appellant has been convicted separately, but vide order dated 29th January, 2003, it was clarified that the substantive sentence of imprisonment were to run concurrently. That being so, the maximum imprisonment awarded to the appellant was of 5 years and fine. It is the submission of learned counsel for the appellant that he has remained in custody for more than the period which was awarded to him and therefore he be sentenced to the period during which he remained as under-trial in this case.

20. Although this submission is not fortified by the material on record, but perusal of nominal roll goes on to show that the appellant

remained in jail from 26th April, 1997 to 15th January, 2001 i.e. 4 years and 10 days. Keeping in view the fact that the case pertains to the year 1996 and the appellant has suffered rigours of trial for more than 17 years and he has already spent a period of 4 years and 10 days in jail, ends of justice will be met if he is sentenced to the period during which he remained as under trial in this case. He is, however, directed to deposit the fine, if not already deposited, with the learned trial Court within a period of two weeks and place on record a copy of the receipt.

21. With the aforesaid observations the appeal stands disposed of. Trial court record be sent along with copy of order.

**SUNITA GUPTA
(JUDGE)**

JULY 26, 2013

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