

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 13th February, 2013

DECIDED ON : 8th March, 2013

+ CRL.A. 1008/2012

MANISH SONI Appellant

Through : Mr.Chetan Lokur, Advocate.

versus

THE STATE (GOVT. OF NCT) DELHI Respondent

Through : Mr.M.N.Dudeja, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The appellant- Manish Soni challenges correctness of judgment dated 21.09.2011 and order on sentence dated 29.09.2011 in Sessions Case No. 09/2010 arising out of FIR No. 738/2007 PS Connaught Place by which he was held guilty for committing offences under Sections 328/379 IPC and sentenced to undergo RI for five years with total fine ₹ 30,000/-.

2. Allegations against the accused were that on 30.10.2007 at 05.30 P.M at Volga Restaurant, he and Co-Convict Sachin Gandhi administered some intoxicant substance to victim/ complainant- Chambak Vasu Dinesh and Rajesh Kalidass and deprived them of gold chain,

locket, gold bracelet, cash ₹ 3,500/-, mobile phone, key of car, driving licence, PAN card and ABN-Amro bank credit card. It was also alleged that from 01.10.2007 to 15.01.2008, they dishonestly purchased two mobile phones using stolen credit card. Somesh Dua was arrested and challaned for committing offence punishable under Section 411 IPC being in possession of 10 gold chains, 3 bracelets, 2 karas, 2 gold rings knowing or having reasons to believe the same to be stolen property. The prosecution examined eight witnesses to prove the charges. In their 313 Cr.P.C. statements, the accused did not deny the incriminating circumstance proved against them. On appreciating the evidence and considering the rival contentions of the parties, the Trial Court, by the impugned judgment, held the appellant and his associate Sachin Gandhi guilty for committing offences punishable under Sections 328/379 IPC and sentenced them. Being aggrieved, the appellant has preferred the appeal. It is relevant to note that co-accused Somesh Dua compounded the offence under Section 411 IPC with the complainant and was acquitted vide order dated 18.02.2011.

3. Learned counsel for the appellant urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The prosecution could not establish what poisonous substance was

administered to the complainant. No evidence was collected from Moolchand Hospital where the complainant was taken and admitted. Counsel highlighted discrepancies and contradictions in the statements of material witnesses PW-2 (Chambak Vasu Dinesh), PW-3 (Rajesh Kalidass) and PW-5 (Biju Kumar) to emphasize that they gave inconsistent version as to how the complainant was taken to Moolchand Hospital or Police Station Mandir Marg. They claimed that their friend Jobi reached the spot but the prosecution did not cite him a witness and he was not examined. The prosecution did not offer plausible explanation for inordinate delay in lodging the First Information Report. The Trial Court fell into grave error in putting questions under Section 313 Cr.P.C. to both the accused mechanically. The witnesses made vital improvements in their deposition in the Court. Learned APP urged that PW-2 and PW-3 had no ulterior motive to falsely implicate the accused. In their 313 Cr.P.C. statements, the accused admitted his guilt.

4. I have considered the submissions of the parties and have examined the record. To find out the guilt of the appellant, testimony of PW-2 (Chambak Vasu Dinesh) is very crucial. He deposed that on 24.08.2007 when he was going to Trivendrum with his family, Manish Soni and Sachind Gandhi met them and introduced themselves as Raju

and Rakesh. During discussion at IGI Domestic Airport, the accused took his mobile number. On 26.08.2007 and 04.09.2007 he was contacted on his mobile phone by the accused and was asked to meet him for business purpose but he declined. On 30.10.2007 at 05.30 P.M., the accused called him in Volga Restaurant, Connaught Place for business deal on his mobile. He told him that two customers would come for deal. He with his cousin Rajesh Kalidass went to Volga Restaurant in his Wagon R car bearing No.DL3CAW-0252. Both the accused met him in Volga Restaurant. They consumed beer and chicken. The accused after receiving a telephone call on his mobile told him that customers would come at Nirulas Restaurant. Thereafter, they all went to Nirulas Restaurant, Connaught Place. He and his cousin kept on sitting in the vehicle in wait for the customers. He further deposed that the accused brought four glass juice from Nirulas and offered them. After consuming juice, he started feeling giddy. He requested his cousin to take him to the hospital. Rajesh Kalidass called his friend. Thereafter, he became unconscious. After three days, when he regained consciousness, he found himself in Moolchand Hospital. He found that his gold chain, locket, bracelet, cash ₹ 3,500/-, registration certificate of the vehicle, duplicate key, PAN card, two credit cards and Soni mobile phone were missing. He also came to know

purchases for ₹ 38,000/- made by using his credit card. After discharge from the hospital, he decided not to file any criminal case. On 24.12.2007 at 02.00 A.M. some officials from CBI came to search his house. They disclosed that they had got call from his mobile. He narrated the incident to ACP Rajbir Singh and on 25.12.2007 his statement (Ex.PW-2/A) recorded. He identified the stolen articles in the Court. The accused did not cross-examine the witness despite an opportunity given. The PW-2's testimony on material facts remained unchallenged and uncontroverted. PW-3 (Rajesh Kalidass) corroborated PW-2's version in its entirety. He also identified Manish Soni and Sachin Gandhi who had met them in Volga Restaurant. He also deposed that after the accused brought juice from Nirulas Restaurant, Chambak Vasu Dinesh complained that he was not feeling well. He made telephone call to his friend Jobi. The complainant was treated at Moolchand Hospital. The accused did not opt to cross-examine him also. PW-5 (Biju Kumar) deposed that the vehicle Wagon R was found parked underneath a tree near Birla Mandir. He saw complainant Dinesh lying unconscious on the backseat of that vehicle. The vehicle was brought to the Police Station and from there he took his friend Dinesh to Moolchand Hospital and admitted him there. His testimony remained unchallenged in the cross-examination.

5. On scrutinising the testimony of PW-2 and PW-3, it reveals that they identified both Manish Soni and Sachin Gandhi to whom they met on 30.10.2007 at 05.30 P.M at Volga Restaurant. From there, they were taken to Nirulas Restaurant and juice was offered. It also transpires that after consuming juice, the complainant started feeling giddy and was taken to Moolchand Hospital. Complainant found that cash and other articles were stolen. Complainant identified these articles in the Test Identification Proceedings conducted during investigation. All these articles were also recognised by him in the Court. Their statements remained unchallenged and uncontroverted. No ulterior move was assigned to them for falsely implicating the accused in the incident.

6. It is true that there is delay in lodging the First Information Report. However, the complainant has given plausible and reasonable explanation for delay. He stated that after discharge from the hospital, he had consultation with his family members and they decided not to lodge any criminal proceedings. When he was contacted by CBI Officers, he recorded his statement (Ex.PW-2/A). The very fact that the complainant did not opt to initiate criminal proceedings shows that he was nurturing no grudge against the accused. It makes him trustworthy and reliable witness.

He had no ulterior move to fake the incident and to get himself admitted in Moolchand Hospital.

7. Both the accused were arrested by CBI. From the disclosure statements made by them, their involvement in the present case surfaced. Number of other cases involving the accused were worked-out. The articles recovered at the instance of the accused were shown to the complainant and were identified by him in the Test Identification Proceedings. The police was able to recover stolen articles belonging to the complainant from the possession of Somesh Dua who opted to compound the offence. Recovery of the stolen articles at the instance of the accused is an incriminating circumstance against him.

8. The incriminating circumstances proved against the accused were put to him. In his 313 Cr.P.C. statement, the accused did not deny the incriminating circumstances and admitted that he had acquaintance with the complainant and had called him at Volga Restaurant. He further admitted that he mixed Larpost, a sedative, in the chicken curry and served to the complainant. He drove Wagon R vehicle to Lady Harding Medical College and when PW-2 went to find out emergency, he drove away the vehicle and brought it in Mandir Marg area. He further admitted that he had stolen a gold chain with locket, a bracelet, RC of the vehicle,

duplicate key of the vehicle and Sony mobile phone. He denied to have stolen cash ₹ 3,500/- and two credit cards. He explained that the cash stolen was ₹ 400/- and only one bank credit card was removed from the complainant. He also admitted that he bought two mobile phones by using the credit card. Other incriminating circumstances put to him were not denied. He admitted his guilt and prayed for leniency as he had already remained in custody for 44 months.

9. Taking into consideration, the unchallenged testimony of PW-2 and PW-3 coupled with admission of guilt in 313 Cr.P.C. statement, in my considered view, the prosecution was able to establish the guilt of the accused beyond reasonable doubt. Contradictions and discrepancies highlighted by the counsel are in-consequential due to confession of guilt. Conviction of the appellant under Section 328/379 IPC needs no interference as it is based upon cogent appraisal of the evidence. The appellant has already served the sentence awarded to him. The appellant was sentenced to undergo RI for five years with total fine ₹ 30,000/-. Nominal roll reveals that as on 15.09.2012, the appellant had already undergone 4 years, 8 months and 12 days incarceration. He earned remission for 3 months and 18 days. It further reveals that after the completion of the substantive sentence on 13.09.2012, fine sentence

would start after completion of all substantive sentences in the cases detailed in annexure 'A'. Annexure 'A' reveals that the appellant was convicted in 15 different cases and was awarded substantive sentences with fine.

10. In the light of above discussion, the appeal lacks merits and is dismissed. Conviction and sentence of the appellant are maintained.

11. The Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

08 MARCH, 2013

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