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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 9th April, 2015

+ CRL.A. 437/2013 & Crl. M.B. 662/2013

RAVI PRAKASH @ RAVI Appellant
Through: Mr. Sanjay Dubey, Advocate

versus

STATE Respondent
Through: Mr. Pramod Saxena, APP along with
SI Anand Pratap, PS Anand Vihar

**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 impugned judgment dated 26th February, 2013 and order on sentence dated 2nd March, 2013 in Sessions Case No. 17/11 arising out of FIR No. 278/10 whereby the appellant was convicted under Section 328/379/34 IPC and was sentenced to undergo rigorous imprisonment for 5 years with fine of Rs.10,000/- in default to undergo simple imprisonment for 6 months under Section 328/34 IPC and 3 years rigorous imprisonment u/s 379/34 IPC. Both the sentences were to run concurrently. The

appellant was granted benefit of Section 428 of Code of Criminal Procedure.

2. Prosecution case succinctly stated is as follows:-

On 13th June, 2010, complainant Jitender Nalwa came to KKD Courts in his car bearing No. DL-7CF-3709 (Honda Civic) to get documents for drug licence prepared but no typist was available it being a Sunday, therefore, he proceeded back to his house. A minor accident took place at Citi Centre Red Light with another car for which he paid a sum of Rs.1500/- to the occupants of the car. During this incident, a crowd gathered at the spot and one person from the crowd gave him *peda* saying that it was *Mata's Prasad*. After eating the *Prasad*, he became unconscious and did not know as to what happened with him. On 14th June, 2010 at 6:00 AM, a person brought him in a TSR to his house and at that time, he was wearing only under garments. His car in which his laptop Sony V10, Bank cheque-book, credit cards and debit cards, R/C, Raw Material of his workshop, Medical Card, PAN Card and some other documents were lying, was stolen. His two gold chains, a gold ring and

Rs.30,000/- cash were also stolen. On the basis of this complaint, FIR u/s 328/379 IPC was registered.

3. It is further the case of prosecution that on 20th June, 2010, the complainant gave a supplementary statement wherein he suspected Shalu and Ravi to be the person who intoxicated him and stole his car, cash and other goods.

4. On 25th June, 2010, accused Ravi Prakash @ Ravi was arrested from Mangalam Road and a Laptop and five credit cards were recovered from his possession. The accused also got recovered Honda Civic car of the complainant from village Paliya, District Kheeri. After completing investigation, charge sheet was submitted against the accused u/s 328/379 and 411 IPC.

5. Prosecution in all examined eight witnesses. The plea of the accused in his statement recorded under Section 313 Cr.P.C. was one of denial simplicitor. After perusing the evidence adduced by the prosecution, vide impugned judgment, accused was convicted u/s 328/379/34 IPC and was sentenced as mentioned hereinabove.

6. Feeling dissatisfied, present appeal has been preferred.

7. Challenging the legality of the impugned judgment, learned counsel for the appellant referred to various discrepancies appearing

in the prosecution case. He submits that entire case of prosecution rests on the testimony of the complainant, however, the complainant is wholly unreliable as he had been changing his stand time and again making material improvements. He even did not support the case of prosecution, as such, was declared hostile. Therefore, he could not have been relied upon. The recovery as alleged from the person of the appellant or at his instance is planted one. As such, the impugned judgment suffers from infirmity and is liable to be set aside.

8. Learned Additional Public Prosecutor for the State, on the other hand, supported the findings of the learned Trial Court and submitted that there is no merit in the appeal and the same is liable to be dismissed.

9. The star witness of the prosecution is the complainant himself. Initial statement Ex.PW5/A made by the complainant which became the bed rock of investigation reveals that the complainant had stated that he was doing the business of surgical implants and instruments at shop No.73, Truck Market, Gulabi Bagh, Delhi. He had applied for drug licence. On 13th June, 2010 at about 2:15 pm, he was going to Karkardooma Court from his workshop in his car bearing DL 7CF 3709 (Honda Civic) Brown colour for getting the documents for drug

licence prepared. After reaching Karkadooma Court, he came to know that it being a Sunday, no typist was available, as such, he proceeded towards his house. When he reached near red light of Citi Centre, there was traffic. When he tried to stop his car, his car hit another car. One Sardar and another person came out of the car and started exchanging hot words with him. However, the matter was settled after he paid a sum of Rs.1500/- to them. Due to the incident, several persons collected over there. One of the persons from the crowd gave him *peda* on the pretext that since the matter had been settled, he should eat the *Prasad*. He ate the *Prasad*. Thereafter he became unconscious. Some person left him at his house at about 6:00 AM on 14th June, 2010 in undergarments. He did not know what happened after he consumed *Prasad* and he was dropped at his house. His car containing laptop Sony V10, bank cheque book, credit and debit card, R/C, raw material of his workshop, medical claim card, PAN card and many other relevant documents was found missing. He was wearing two gold chains and one ring which were also found missing. Rs.30,000/- cash was also missing.

10. On 20th June, 2010, he gave a supplementary statement mark PW5/DA wherein he stated that in order to save his matrimonial life,

he had concealed the fact that one girl, namely, Shalu who was known to him from earlier had called her at Cross River Mall on 13th June, 2010. One boy named Ravi aged about 25-26 years had brought her on his motorcycle to Cross River Mall. Shalu sat in his car and the motorcyclist followed them. When the accident took place at red light of Surajmal Vihar, at that time also the motorcyclist was present. Shalu gave him *mata ka prasad* and after consuming the same, he became unconscious. He suspected that Shalu and Ravi in connivance with each other made him unconscious and committed theft of his car, money and other belongings. Shalu used to call him frequently at Jagatpuri Bus Stand or Cross River Mall.

11. When he appeared in the witness box, he deposed that he was doing the business of surgical implants and instruments for which he had applied for a drug licence. On 13th June, 2010, he was coming to Karkardooma Courts in his Honda Civic Car for getting the documents prepared for drug licence. He left his house at about 12:00 noon. On the way, he received a call from a girl named Shalu, who was known to him for the last 1½ to 2 years. She told him that her mother had suffered brain haemorrhage and she had come to Delhi a day before from her village and wanted Rs.1000/- to 1500/- for

getting a new dress. She told him that she was speaking from Trans Yamuna. He asked her to come to Karkardooma Courts to collect money from him. He reached Karkardooma Courts, however, did not find any typist being Sunday. After five minutes, Shalu reached at the main gate of Karkardooma Courts. He gave her Rs.1500/- and she gave him *Prasad of peda* stating that she had got a job. Although the *Prasad* was not good in taste, however, on being told by Shalu that it was okay, he consumed the same. Shalu sat inside his car and they talked for 3-4 minutes. Shalu asked him to drop her at the red light of the main road. He started losing his senses. After crossing Cross River Mall at red light, he had to take right turn. His car slightly touched a car standing over there. A *sikh* gentleman with another person came out of their car and asked to get the bumper of their car repaired. He paid them Rs.1500/- to get the bumper repaired. Thereafter he took U turn and stopped the car under a tree as it was very hot and he was losing his senses then accused Ravi came and took the driver seat of his car and made him to sit on the front left seat of the car. He was taken around in his car by accused Ravi and Shalu on the roads. In the evening, they dropped him at ISBT Kashmere Gate and made him sit in a TSR. The three wheeler driver dropped

him in a park behind Police Station Ashok Vihar and Deep Cinema. He kept sleeping in the park during the night. Some unknown person in the night removed his shirt and pant and in the morning when he got up and partly regained his senses, he found himself in the park in underwear and baniyan. Then he took a TSR and reached his house at about 7:00 AM. He was taken to Nazar Kanwar Surana Hospital at Gulabi Bagh by his family members. On 15th June, 2010, he went to Police Station Gulabi Bagh to report the matter, however, on their instructions, he went to Police Station Anand Vihar and gave his statement Ex.PW5/A disclosing the entire incident and the articles stolen. He further deposed that on 25th June, 2010, accused Ravi was apprehended at Mangalam Chowk. His laptop make Sony was recovered from him. On his search, five debit cards were recovered from the purse of the accused. After the accused was arrested, he made a disclosure statement Ex.PW1/E pursuant thereto he along with police and the accused went to Paliya from where accused got recovered his car bearing No. DL 7CF 3709 near a hospital near Dudhiya Chowk.

12. PW1 Constable Surender Singh and PW7 ASI Kishan Lal are the witnesses to the recovery of car, laptop and debit card belonging to the complainant.

13. So far as, actual incident is concerned, the prosecution case hinges on the solitary testimony of the complainant Jitender Nalwa. As a general rule, the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. It is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. (vide **Sunil Kumar vs. State of Govt. of NCT of Delhi** (2003) 11 SCC 367; **Namdeo v. State of Maharashtra** (2007) 14 SCC 150; **Kunju @ Balachandran vs. State of Tamil Nadu** AIR 2008 SC 1381).

14. Tested on the touchstone of the aforesaid legal proposition, it is amply clear that testimony of the complainant Jitender Nalwa is not wholly reliable, inasmuch as, he is not only giving different versions at different stages of proceedings but also making material improvements as in the initial statement Ex.PW5/A there was no

mention of accused Ravi and Shalu to be the person who administered him any intoxicating or stupefying substance. However, in his supplementary statement dated 20th June, 2010, he hold Shalu and the present appellant to be responsible for committing theft of his car and the various articles lying in his car. He further levelled allegations against Shalu to be the person who administered him intoxicating *Prasad*. In his deposition before the Court, he tried to make further improvements by stating that *Prasad* was given to him by Shalu and thereafter he was in a stage of semi-consciousness. Then accused Ravi came in his car and then both Shalu and accused made him to roam in different places in the car and ultimately he was dropped at ISBT Kashmere Gate and made him to sit in a TSR which left him in a park behind Police Station Ashok Vihar where he remained throughout the night and his pant and shirt were removed by some unknown person and he himself went to his house in under wear and baniyan in the morning whereafter he was taken to hospital by his family members. However, at no point of time, he levelled any allegation against accused Ravi for administering stupefying substance to him. Moreover, he was examined by PW6 Dr. Anurag Jha at Nazar Kanwar Surana Hospital at Gulabi Bagh and he prepared his MLC Ex.PW6/A. According to him, patient Jitender Nalwa was brought by Mr. Manmohan with PCR Van in a drowsy, confused and altered sensorium state with blunt

chest injury on right side and abrasion on the left side elbow. According to him, he was unfit for statement and on the oral request of the relatives of the patient, he was discharged on the same day from the hospital and his condition was same as at the time of admission. As per the MLC, when the patient was brought to the hospital, the alleged history given to the doctor was “*attending the marriage party yesterday with some friends and sudden loss of stability and does not remember anything*”. No gastric lavage of the complainant was taken in order to substantiate the allegation that the complainant was administered some stupefying substance which made him unconscious. Moreover, the complainant himself was not completely relied upon by the prosecution as he was cross-examined by learned Additional Public Prosecutor on several aspects. Although, it is true, that merely because the witness is declared hostile, there is no need to reject his evidence *in toto*. The evidence of hostile witness can be relied upon at least to the extent it supports the case of prosecution. However, in view of the fact that the witness has not supported the case of prosecution in all material particulars, his testimony requires to be scrutinized carefully and needs corroboration, which as regards the incident is concerned, is lacking. Under the circumstances so far

as offence u/s 328 IPC concerned, the findings of the learned Trial Court that the appellant in furtherance of his common intention with Shalu (not arrested) administered some stupefying substance to the complainant with intent to commit theft cannot be sustained and is accordingly set aside.

15. However, so far as recovery of car belonging to the complainant at the instance of accused, pursuant to his disclosure statement, from Palia, Khiri, UP and the debit cards belonging to the complainant and his wife on 25th June, 2010, same stands proved from the corroborative testimony to ASI Kishan Lal and PW1 Surender Singh. Since the incident is dated 13th June, 2010 and the recovery is effected on 25th June, 2010, under the circumstances, although it is not established beyond reasonable doubt that accused committed theft of these articles belonging to the complainant but it stands proved that he dishonestly received or retained the stolen property knowing or having reason to believe the same to be the stolen property. That being so, he is liable to be convicted under Section 411 IPC.

16. Accordingly, the appeal is partly allowed. Conviction of the appellant u/s 328/379 IPC is set aside. However, he is held guilty of offence under Section 411 IPC and is sentenced to undergo rigorous

imprisonment for a period of three years. As per the nominal roll dated 30th March, 2015, the appellant has already undergone a sentence of 4 years 3 months and 3 days besides earning remission of 7 months and 14 days. As such, he be released forthwith if not wanted in any other case.

17. The appeal stands disposed of. Pending application, if any, also stands disposed of accordingly.

18. While passing over, it will not be out of place to mention the slipshod manner in which the investigation has been conducted by the Investigating Officer of the case. The appellant was arrested in view of the supplementary statement made by the complainant wherein he had levelled allegations against the appellant as well as one Shalu, however, no sincere effort has been made to arrest Shalu or to carryout investigation qua her. Charge sheet merely makes a mention that in the absence of complete address of Shalu, she could not be arrested. As per the version given by the complainant, Shalu was known to him for the last about 1½ to 2 years and had been meeting him quite frequently. Under the circumstances, it is hard to believe that complainant would not be knowing the whereabouts of Shalu. In that view of the matter, had sincere efforts been made by the

Investigating Officer, she could have been arrested but that was not done and the main accused has been allowed to go scot free due to reasons best known to the Investigating Officer. The Investigating Officer has failed to discharge his solemn duties. As such, necessary action is liable to be taken against him.

Copy of the judgment be sent to the concerned DCP for information and necessary action against the Investigating Officer of the case.

Copy of the judgment along with the Trial Court record be sent back.

Copy of the judgment be also sent to Superintendent Jail for information and necessary action.

**(SUNITA GUPTA)
JUDGE**

APRIL 09, 2015

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