

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

% *Judgment Reserved on: May 24, 2016*
Judgment Delivered on: May 27, 2016

+ **CRL.A. 636/2015**

JITENDER KUMAR SINGH Appellant

Represented by: Mr. Jatin Rajput and
Mr. Anupam Dubey, Advs.

versus

STATE Respondent

Represented by: Mr. Ravi Nayak, APP for the
State.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. By the present appeal, the appellant challenges the impugned judgment dated 20th August, 2014 convicting him for the offence punishable under Sections 328/394 IPC in FIR No.112/2010 registered at PS Old Delhi Railway Station and the order on sentence dated 29th August, 2014 directing him to undergo rigorous imprisonment for a period of seven years and to pay a fine of ₹15,000/-; in default to undergo simple imprisonment for a period of nine months for the offence punishable under Section 328 IPC and rigorous imprisonment for a period of seven years and to pay a fine of ₹20,000/-; in default to undergo simple imprisonment for a period of nine months for the offence punishable under Section 394 IPC. It was further directed a sum of ₹30,000 be given as compensation to the complainant Smt. Kalpana Dass PW-1 if the fine amount is realized.

2. Prosecution case is that on 26th July, 2010 one lady Kalpana Dass, PW-1 with ASI Tara Chand Meena, PW-4 and HC Rajender Singh, PW-9 met Surjan Singh, PW-7, Inspector In-charge, PS GRP Ghaziabad in the circulating area of Railway Station Ghaziabad. Kalpana Dass and HC Rajender Singh told him that on 17th July, 2010 while she was travelling in Brahmaputra Mail which she had boarded from Delhi to Malda, she met one person with whom she became friendly and he also helped her in the train. She told that she had borrowed the mobile phone of that person to make a call to her sister. She also informed that the said person gave her a cold drink laced with some intoxicant substance. After consuming the cold drink, she became unconscious and she was robbed of her cash of ₹15,000/- by that person. She further stated that when she returned from Malda she took the number of that person from her sister. She had made a call on the number of said person and asked him to meet her at the booking counter of Railway Station, Ghaziabad. At about 4:30 PM Kalpana Dass pointed towards a person who was standing near the booking counter and on seeing Kalpana Dass that person came towards her and was apprehended at the instance of Kalpana Dass. On interrogation the appellant told his name as Jitender. One black wallet containing ₹1,175/- cash, one receipt of SBI Bank, Kanpur for depositing the amount of ₹5,000/- on 27th July, 2010 and ten strips of tablets namely 'NITROZAPAM' containing ten tablets each were recovered from the possession of Jitender. On the 'Zero' FIR No.211/2010 under Sections 328/397/411 IPC being transferred from GRP Ghaziabad to Old Delhi Railway Station, FIR No.112/2010 under Sections 379/411/328 IPC was registered.

3. Learned counsel for the appellant contends that there are contradictions in the statement of Kalpana Dass PW-1. During her examination-in-chief, she stated that she discovered in train that the money was stolen but during her cross-examination, she stated that she learnt that money was stolen when she reached home. Kalpana Dass has falsely implicated the appellant in the present case because she wanted to marry the appellant but he refused to marry her because he was already married. Kalpana Dass PW-1 was not medically examined. Thus, the allegation with respect to giving some intoxicating substance to her was not medically confirmed. Nothing was recovered from the possession of Jitender. The allegation that the appellant was in possession of intoxicating tablets is false and baseless. The prosecution failed to prove that the money deposited by the appellant in his bank account was a part of alleged stolen money from Kalpana Dass.

4. Learned APP for the State on the other hand contends that appellant has rightly been convicted on the basis of the testimony of Kalpana Dass which is reliable and warrants no interference.

5. Smt. Kalpana Dass was examined as PW-1. She stated that the incident took place on the 17th but she did not remember the month and year of the incident. She further stated that on the day of the incident at about 11:30 or 11:45 P.M., she boarded Brahmaputra Mail from Old Delhi Railway Station to go to her native place. Since she did not have a reserved ticket, she was looking for the Ticket Collector to request him for a reserved seat. In the meantime, Jitender approached her and asked her about the train which she had to board. When she told him about the train, Jitender told her that he was also travelling in the same train and was going to Malda.

Jitender was carrying one small suitcase and a small bag. He offered to carry her bag. Initially she refused but on repeated requests, she allowed Jitender to carry her bag. She further stated that she was carrying cash of ₹15,000/- which she had attached in the string of the petticoat that she was wearing. Jitender offered her seat in general compartment. As the train started Kalpana Dass, PW-1 took the mobile phone of Jitender so that she could inform her sister Sumegha, PW-2 that she had boarded the train. After sometime, Jitender offered her cold drink which she refused but he insisted her to have it. So, she took a few sips of the cold drink. The appellant was also drinking the same cold drink and he had kept the remaining cold drink with him. After crossing Yamuna River, Jitender asked her to go to the toilet but she refused. She got annoyed and angrily refused him when Jitender made the same request again. But after sometime, she went to toilet on her own. When she returned back, Jitender again offered the same cold drink but she refused. On repeated requests, she drank few sips of cold drink. After 15 minutes of drinking the cold drink, she fell asleep. When she woke up, she found that the train had reached Malda Station. She was informed by the co-passengers that Jitender was searching money, he checked her bags also and he got off from the train somewhere after Ghaziabad.

6. Kalpana further deposed that on checking she found that ₹15,000/- which she had kept in her petticoat were missing and in place of money, one small pocket diary had been kept by Jitender. After reaching her house she informed her sister PW-2 telephonically about the incident. She further stated that when she went to the Police Station to inform about the incident, her report was not lodged rather she was advised to make a complaint at Ghaziabad or Old Delhi Railway Station Police Station. After 6-7 days of

the incident, she went to Police Station at Ghaziabad and informed the police. She also informed about the mobile number of Jitender from which she had called up her sister. She stated that she made a call, on the advice of Ghaziabad police, to Jitender on the pretext of meeting. She asked him to meet at Ghaziabad Railway Station and Jitender was apprehended at her instance.

7. During cross-examination Kalpana Dass, PW-1 stated that she had never seen Jitender prior to the incident and denied the suggestions that she used to meet Jitender prior to the incident. She further denied the suggestion that she used to call Jitender on his phone or that she insisted him to marry her and on his refusal she has falsely implicated him in the case. Kalpana Dass further stated that she did not hand over her travelling ticket as it was kept by the Travelling Ticket Collector. She deposed that she was having a phone but since there was no balance she asked Jitender to give his phone so that she can make a call to her sister. She also stated that she came to know about missing of money after reaching home, that is, on the 19th.

8. The explanation of Jitender Singh in his statement under Section 313 Cr.P.C is as under:-

“A. This is a false case. Kalpana Dass was known to me. She wanted to marry me. On my refusal, she falsely implicated me in this case. I was already married in the year 2003 and Kalpana Dass had met me in the year 2004. On the day of incident, she had called me at Ghaziabad Railway Station. She was present at the spot with the police officers in plain clothes and then I was apprehended. She knew that I was already married, yet she wanted to marry me.”

9. Sumegha Aggarwal who was examined as PW-2 stated that Kalpana Dass treated her like a sister and that Kalpana Dass had gone to Malda by

train on 17th July, 2010. Since Kalpana had left her mobile phone No.9999998475 with her, she called up from mobile phone of a co-passenger bearing No.99900722990 at about 11.45 PM-12.00 midnight informing that she had boarded the train.

10. Besides mobile number 9999998475, Kalpana Dass was using mobile number 9593220893 at Malda which was the case of the prosecution. Israr Babu PW-8 brought the CDRs and consumer application forms of both the mobile numbers i.e. 9999998475 and 9593220893 used by Kalpana Dass PW-3 at Delhi and Malda respectively and prove the CDRs. It is apparent that Kalpana Dass made number of calls from her mobile number 9593220893 to the mobile number of appellant i.e. 9990072290 on various dates particularly on 19th July, 2010 even for long duration. The relevant call records from the three CDRs exhibited as Ex.PW-3/A, Ex.PW-8/B and Ex.PW-8/E reveal as under-

“CALL DETAILS OF 99900722901 (JITENDER SINGH’S MOBILE NUMBER)

Date	Time	Duration	“A” Number	“B” Number	Page No. in TCR	Exhibit
17.07.2010	11.47.19 pm	139	919990072290	919999998475	Page-267	Ex.PW-3/A

CALL DETAILS OF 9999998475 (COMPLAINANT’S Delhi MOBILE NO.)-

S.No.	“A” Number	“B” Number	Date-Time	Duration	Page No. inTCR	Exhibit
35	919999998475	919990072290	19 JUL-2010, 17.33.29	6	Page-299	Ex.PW-8/B

CALL DETAILS OF 9593220893 (COMPLAINANT’S Malda MOBILE NO.)-

S.No.	“A” Number	“B” Number	Date-Time	Duration	Page No. inTCR	Exhibit
12	09593220893	09990072290	19 JUL-2010, 10.33.45	148	Page-313	Ex.PW-8/E

14	09990072290	09593220893	19 JUL-2010, 10.41.21	471	-do -	-do-
19	09990072290	09593220893	19 JUL-2010, 11.57.21	977	-do -	-do-
34	09593220893	09990072290	19 JUL-2010, 15.45.52	12	-do -	-do-
35	09990072290	09593220893	19 JUL-2010, 15.46.17	223	-do -	-do-
36	09990072290	09593220893	19 JUL-2010, 15.50.49	81	-do -	-do-
37	09990072290	09593220893	19 JUL-2010, 15.55.20	22	-do -	-do-
38	09990072290	09593220893	19 JUL-2010, 16.12.28	19	-do -	-do-
43	09990072290	09593220893	19 JUL-2010, 17.22.09	244	-do -	-do-
45	09990072290	09593220893	19 JUL-2010, 17.27.48	1218	-do -	-do-
118	09990072290	09593220893	26 JUL-2010, 14.44.03	321	Page-319	-do-
119	09990072290	09593220893	26 JUL-2010, 15.27.04	16	-do -	-do-

11. The phone call details between Kalpana Dass and Jitender Singh even on the basis of limited call detail record probablize the defense of Jitender Singh that Kalpana Dass was known to him prior to the incident. Thus, the version of Kalpana Dass that Jitender Singh was totally an unknown person and he after giving her intoxicant took money from beneath the string of her petticoat and robbed her cannot be believed. Jitender Singh is entitled to the benefit of doubt. Thus Jitender Singh is acquitted of the charge framed.

12. The impugned judgment of conviction and order on sentence are set aside. Jitender Singh, who is in custody, be released by Superintendent, Central Jail, Tihar, if not required in any other case.

13. Appeal is disposed of.

14. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

15. TCR be returned.

(MUKTA GUPTA)
JUDGE

MAY 27, 2016
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