

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

**Criminal Appeal S-2441-SB of 2009
Date of Decision: March 17, 2017**

Mohammad Salim @ Chanchal	Versus	Appellant
State of Haryana		 Respondent

Criminal Appeal S-2865-SB of 2009

Naveen @ Deepak	Versus	Appellant
State of Haryana		 Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Navratan Singh, Advocate
as legal aid counsel for appellant-Mohammad Salim
@ Chanchal.

Ms. G.K. Dulat, Advocate
as legal aid counsel for appellant-Naveen @ Deepak.

Mr. Ashok S. Chaudhary, Addl. A.G., Haryana.

T.P.S.MANN, J. (Oral)

The appellants, namely, Mohammad Salim @ Chanchal and Naveen @ Deeapk were tried for committing offences punishable under Sections 328 and 411 IPC. Vide judgment and order dated 18/19.9.2009, learned Additional Sessions Judge,

Ambala, convicted them for the offence under Section 328 IPC and sentenced them to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months. They were, however, not convicted under Section 411 IPC as they stood convicted for the main offence under Section 328 IPC.

Aggrieved of their conviction and sentence, the appellants filed their respective appeals, which stood admitted and their sentences of imprisonment suspended.

According to the prosecution, on 31.7.2008, complainant Prahlad Devnath, who used to work as a labourer in Himachal Pradesh reached Kalka Railway Station at about 6.30 p.m. in order to board a train for his native village in Rajasthan. At that time, he was carrying a black bag, in which, he had kept cash and few presents for his family. It also contained an amount of Rs.15,000/-, which was entrusted to him by his friend Ashish for handing over the same to his family residing in his native village in Rajasthan. His wallet also contained the railway ticket and voter's identity card. While he was sitting on a bench and waiting for the train, two young boys, who were in the age group of 30 to 35 years, came and sat next to him. They started conversing with him. He noticed that both the young boys

belonged to West Bengal as they were speaking Bengali language fluently. They offered him a cup of tea, which he refused. He then himself went to the tea stall from where he brought a cup of tea and started sipping the same. After some time, both the boys offered him a sweet and insisted upon him to have the same. When he refused, he was told that it was Prashad from a very famous temple. The complainant fell in their trap and had a piece of the sweet. A little while later, he started feeling dizzy. He could not remember as to when he became unconscious but later on found himself in a hospital at Bikaner, where he regained consciousness. The black bag wherein he had kept cash, wallet, etc. were all found missing. Though he did not know the names of the accused, but he could identify them if brought before him.

Further case of the prosecution is that on the statement made by the complainant while during his treatment at PBM Hospital at Bikaner, on 3.8.2008 at 9.30 a.m., FIR Ex.P1 under Sections 328 and 379 IPC was registered at Police Station, G.R.P. Bikaner on 3.8.2008 at 10.00 a.m. The said FIR was, thereafter, transferred to Police Station G.R.P. Kalka, where FIR Ex.P3 was registered on 15.8.2008 at 8.30 p.m.

During the investigation of the case, the police arrested the appellants, who, while in police custody, confessed

that they were the ones, who had administered some stupefying material to the complainant and, thereafter, removed his belongings including cash amount.

At the trial of the case, complainant Prahlad Devnath stepped into the witness box as PW6 and narrated the incident. He also identified the appellants, who were present in the Court to be the ones, who had committed the crime.

At the instance of the appellants, the Investigating Agency had recovered plastic containers from them, which contained rounded flat scord tablets labelled as wyeth. The said tablets were forwarded to Forensic Science Laboratory, Haryana and on examination they were found to contain Lorazepam. The defence could not bring any material on the record, which could indicate that the appellants had been falsely implicated in the case. The complainant having identified the appellants to be the ones who had committed the crime and the tablets recovered from the appellants were found to contain Lorazepam, this Court is of the view that the appellants have been rightly convicted for the offences under Section 328 IPC. They were also found to have committed offence under Section 411 IPC but as they stood convicted and sentenced for the main offence under Section 328 IPC, learned trial Court did not find it appropriate to pass separate order of conviction and sentence of the appellants under Section

411 IPC. Under these circumstances, no fault can be found with the impugned judgment passed by the trial Court to the extent of convicting the appellants under Section 328 IPC.

As regards the question of sentence, it may be noticed that the appellants are facing the agony of criminal prosecution for the last more than eight years. When they were heard by the learned trial Court on the quantum of sentence, they had pleaded that they were young persons and sole bread winners of their respective families. They are on bail for the last more than six years. There is no allegation that they have misused the concession of bail in any manner. As per the custody certificates already brought on record by the learned State counsel, Mohammad Salim @ Chanchal appellant has already undergone an actual period of two years and eighteen days out of the sentence of three years imposed upon him whereas Naveen @ Deepak appellant has undergone one year, four months and sixteen days. Besides, both of them have earned remission of more than four months. Mohammad Salim @ Chanchal appellant is not shown to be involved in any other case. Though Naveen @ Deepak appellant was tried in FIR 18 dated 14.4.2008 under Sections 328/379 IPC Police Station G.R.P. Kalka, yet he stood acquitted in the said case vide judgment dated 28.11.2012 passed by the learned Chief Judicial Magistrate, Ambala.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellants behind the bars, once again, for undergoing their remaining sentences of imprisonment. Ends of justice shall be suitably met, if their sentences of imprisonment are reduced to the one already undergone by them.

Resultantly, the conviction of the appellants under Section 328 IPC is upheld. Their substantive sentence of imprisonment is reduced to the one already undergone by them. The sentence of fine alongwith its default clause is, however, maintained.

Both the appeals, CRA S-2441-SB of 2009 and CRA S-2865-SB of 2009 are, accordingly, disposed of.

March 17, 2017

amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No