

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

% Reserved on: 28th November, 2016
Decided on: 27th March, 2017

+ **CRL.A. 78/2016**

LALIT @ MONTU Appellant
Represented by: Mr. Rajendra Kumar, Advocate.
versus

STATE Respondent
Represented by: Ms. Meenakshi Chauhan, APP.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Convicted for offences punishable under Sections 328/379/34 IPC Lalit @ Montu challenges the impugned judgment dated 23rd September, 2015 and the order on sentence dated 30th September, 2015 directing him to undergo rigorous imprisonment for a period of three and a half years and to pay a fine of ₹3,000/- for the offence punishable under Section 328 IPC and rigorous imprisonment for a period of three years and to pay a fine of ₹3,000/- for the offence punishable under Section 379 IPC. Since the convict Pappu @ Amrish has not preferred any appeal, this Court is only concerned with the appeal of Lalit @ Montu.

2. Assailing the conviction, learned Counsel for Lalit @ Montu submits that the motorcycle on which the two convicts came has not been recovered. Apart from the two convicts, there was one more person who had offered lichi juice to PW-1 Farid. However, neither was he interrogated nor charge-sheeted nor summoned as an accused. No statement of person from whose cart Farid ate momos has been recorded. Farid stated that he was not taken

anywhere for the investigation. Thus no pointing out was done by PW-1, hence the memos are false and fabricated. Defence evidence has not been considered by the learned Trial Court. PW-13 SI Sumit Kumar states that there was recovery of three strips of Lorazepam tablets Larpose-2 however, Ex. PW-13/B mentions that only 2 tablets were recovered. Alternatively, it is prayed that since the appellant has already undergone nearly 2 years, he be released on the period already undergone.

3. Learned APP for the State on the other hand submits that insofar as the recovery of Lorazepam tablets Larpose-2 is concerned, the same has been proved by the seizure memo Ex. PW-7/H and the FSL report Ex. PW-14/L. Name of the third person who offered the juice was mentioned in the disclosure statement and PW-14 SI Jai Prakash in his deposition stated that he tried to search the third person but could not find him. Farid was consistent in his statement with respect to the allegations leveled against the two convicts. Version of Farid with regard to unconsciousness and being drugged is proved by the presence of drug in gastric lavage duly corroborated by the MLC and the FSL report. The recovery of battery operated rickshaw has been proved by PW-7 Ct. Rajesh Kumar, PW-9 HC Bhuvan Chandra, PW-10 Ct. Sita Ram and PW-13 SI Sumit Kumar. Version of the defence witnesses is highly unreliable and doubtful as they state that the convicts were arrested on 31st July, 2013, however Farid was not fit for statement on that day and his statement was recorded on 1st August, 2013 for the first time and only thereafter, the FIR was registered.

4. Process of law was set into motion on receipt of DD No. 12A at 10:10 A.M. on 31st July, 2013 at PS Kashmere Gate informing that a quarrel has taken place at Gate No. 3 of Kashmere Gate Metro Station. The same was

assigned to PW-14 SI Jai Prakash. He along with PW-11 Ct. Gopal Chandra went to the spot from where he came to know that the injured has already been taken to Aruna Asaf Ali Hospital. When he reached the hospital, the injured was found to be unfit for statement. The doctor handed over the blood sample and gastric lavage in a sealed condition to PW-14 SI Jai Prakash. On 1st August, 2013, statement of the injured Farid Khan was recorded when he was discharged from the hospital.

5. Farid Khan stated that for the past 7-8 years, he was selling bananas on a hand cart near ISBT Kashmere Gate. He sold his cart 10-15 days before the registration of this case. His friend PW-3 Brijesh, who used to sell kachori on a cart near his cart, gave him his battery operated rickshaw to ply on rent. After paying the rent to Brijesh every day, he used to park the rickshaw at B-67, Gali No. 6, Shastri Park and sleep there only. On 30th July, 2013 around 6:30 P.M., when he was waiting for the passengers at the red light of Shastri Park, two boys came on a motorcycle and said that some items had to be brought from Kashmere Gate and the same have to be dropped at Shastri Park. Before he could agree, one of the boys sat in the rickshaw and other one started going towards Kashmere Gate on the motorcycle. When he reached the wine shop near Ritz Cinema, Kashmere Gate around 7:00 P.M., one more boy came towards the rickshaw and said it will take some time to get the items. The third boy got one lichi juice and two mazaa and asked Farid Khan to drink the lichi juice. He initially refused but when they forced, he drank the lichi juice. Thereafter, he ate momos from the nearby cart and came back to his rickshaw where the two boys were already sitting. After that, he became unconscious and regained consciousness in the hospital. ₹2,000/- from his pocket, Nokia mobile phone

having number 8130786762 and the battery operated rickshaw were found missing. Pursuant to his statement Ex. PW-1/A, FIR No. 199/2013 was registered under Sections 328/379/34 IPC.

6. On 2nd August, 2013, PW-13, SI Sumit Kumar, on the basis of the secret information, apprehended two boys who were involved in stealing battery rickshaws. On inquiry, their names were revealed as Amrish @ Pappu and Lalit @ Montu. Three strips of Lorazepam tablets Larpose-2 which were recovered from them were seized. The battery rickshaw, of which they failed to produce the documents, was also taken into possession.

7. Farid Khan deposed in Court in sync with his statement made before the police. During his cross-examination, he stated that Brijesh was the owner of the battery rickshaw. Lalit sat on his rickshaw and Pappu followed him on the motorcycle. He further stated that besides the two convicts no one else was involved. Convict Pappu had brought the juice and Mazaa.

8. PW-2, Rohit stated that on 19th July, 2013, he had sold one battery operated rickshaw Ex. PW-1/P1 having chasis No. 1834 to Sitapati for a sum of ₹92,000/- and he had taken a photo copy of the ID proof (Ex. PW-2/B) of the purchaser Sitapati who had come to his office along with her son Brijesh.

9. PW-3, Brijesh corroborated the testimony of Rohit that he had purchased the battery operated rickshaw Ex. PW-1/P1 in the name of his mother Sitapati.

10. PW-4 Sitapati, who is the rightful owner of the battery rickshaw Ex. PW-1/P1, stated that she had given the rickshaw on rent to Farid. On 1st August, 2013, the rickshaw was stolen.

11. PW-15 Dr. Hemant Sharma, Specialist Orthopaedic, Aruna Asaf Ali Hospital appeared and proved MLC and X-ray report of Farid Khan. As per

the MLC and X-ray report, fracture was found in right forearm of Farid Khan.

12. Contention of learned counsel for the appellant that as per Ex.PW-13/B only two tablets were recovered is wrong. The name of the medicine is Lorazepam tablets Larpose-2 and not that two tablets were recovered. As per the seizure memo three strips of ten tablets of Lorazepam tablets Larpose-2 were recovered out of which two strips have full 10-10 tablets whereas the third strip had only four tablets. As per the evidence led it is apparent that Farid was found in an unconscious condition near Kashmere Gate Metro Station and was removed to Aruna Asif Ali Government Hospital by PCR van where the doctor vide Ex.PX-1 found him unconscious. Later also when he got consciousness he was drowsy, he had swelling on the right forearm and tenderness; besides it was case of unknown poisoning. The MLC opines injury on Farid to be grievous as there was fracture in the ulna right shaft. Lalit @ Montu and his co-convict Pappu @ Amrish were arrested with the battery rickshaw on 2nd August, 2013 two days after the incident and one day after registration of the FIR.

13. The appellant and co-convict could not explain the possession of the battery rickshaw as they had no documents thereof with them. Further the owner of the battery rickshaw Sitapati besides Rohit and Brijesh have already been examined. PW-2 to PW-4 have deposed about selling of battery operated rickshaw having chasis No. 1834 to Sitapati for a sum of ₹90,000/- which she gave to Farid to operate. When the battery rickshaw was exhibited by Brijesh, the superdar of the rickshaw, no objection to the identity thereof being recovered from the appellant was raised during the recording of the evidence.

14. The pointing out memos were not prepared in the presence of Farid. Hence the same have not been signed by him and rightly so. Lalit and Pappu were not arrested in the presence of Farid and after the arrest when the application for test identification parade was filed both refused to undergo the test identification parade. Though the plea taken by Lalit for refusal of participation in the test identification parade was that his photographs were taken by the police, in cross-examination of Farid no suggestion was given that his photographs were shown to Farid by the police.

15. No doubt in the FIR Farid stated that besides Lalit and Pappu when he reached Ritz Cinema, third person brought him lichi juice however, in his cross-examination he clarified that on the day of incident there were two persons only; Pappu was driving the motorcycle whereas Lalit was sitting as pillion rider and later Lalit sat on his rickshaw and Pappu followed him on his motorcycle. Pappu asked him to wait near the Ritz Cinema wine shop and after he waited for fifteen minutes Pappu brought the juice and Mazaa and after ten minutes of consuming which, he became unconscious. Moreover Farid has not been confronted with this portion of his previous statement in the cross-examination.

16. The defence led by Lalit @ Montu and Pappu is of prior arrest and false implication. Lalit examined DW-2 Bhola, a rickshaw puller, DW-3 Smt. Shobha, his mother and DW-4 Sandeep Arora, his brother. The version of three defence witnesses was that Lalit used to sell samosas on the rehri outside C-31, Mangolpuri with his mother. On 31st July, 2013 at about 12.15 noon Lalit felt hungry and went to A-Block Market to eat Chhole Bhature but did not return till 1.30 PM. When Bhola informed the mother of Lalit that while dropping the passengers from his cycle rickshaw he saw one

Santro car standing and one person who came out of the car caught hold of Lalit and pushed him inside. After about two hours he informed the mother of Lalit. Sandeep Arora stated about visiting Sector-3, Rohini Crime Branch office and that there was a demand of bribe made to him for release of Lalit. Though the three witnesses have deposed in tandem with each other however, immediately after the incident no such complaint was lodged. Even no suggestion has been given to PW-14 SI Jai Prakash, the Investigating Officer of the case that the appellant was apprehended on 31st July, 2013 and falsely implicated in this case.

17. Considering the evidence led by the prosecution and the improbability of the defence evidence it can safely be held that the prosecution has proved beyond reasonable doubt that the appellant committed offences punishable under Sections 328 and 379 IPC. Lalit @ Montu has been awarded sentence of rigorous imprisonment for a period of three and a half years for offence punishable under Section 328 IPC and sentence of rigorous imprisonment for a period of three years for offence punishable under Section 379 IPC. Considering the facts of the case and the fact that there is no other previous involvement of Lalit, his sentence for offences punishable under Sections 328/379 IPC is modified to rigorous imprisonment for a period of three years and to pay a fine of ₹3,000/- and in default whereof to undergo simple imprisonment for a period of three months on both the counts. The two sentences would run concurrently. Upholding the conviction of the appellant for offences punishable under Sections 328/379/34 IPC the order on sentence is modified as noted above.

18. Appeal is disposed of.

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

20. TCR be returned.

(MUKTA GUPTA)
JUDGE

MARCH 27, 2017
‘ga’/‘vn’

