

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

% Reserved on: 20th February, 2017
Decided on: 7th March, 2017

+ **CRL.A. 75/2017 & CrI.M.A. 1126/2017**

BHIM KUMAR @ RAJU

..... Appellant

Represented by: Mr. Dhan Mohan, Ms. Tanu B.
Mishra and Mr. Sarthak
Maggon, Advocates.

versus

STATE (GNCT OF DELHI)

..... Respondent

Represented by: Mr. Amit Ahlawat, APP for the
State with SI Shiv Kumar, PS
Sarai Rohilla Railway Station.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Convicted for offence punishable under Section 379 IPC Bhim Kumar @ Raju challenges the impugned judgment dated 14th October, 2015 and the order on sentence of the even date directing him to undergo rigorous imprisonment for a period of three years for offence punishable under Section 379 IPC.
2. Assailing the conviction, learned counsel for Bhim Kumar @ Raju submits that the prosecution has failed to establish any supporting evidence against Bhim @ Raju. Neither any eye witness nor the CCTV footage has been produced in evidence. Further, the phone allegedly recovered from Bhim @ Raju was of Samsung make and not Chinese make as per the seizure memo. PW-1, Pankaj the victim failed to produce any bill of the aforesaid mobile phone to prove that it belonged to him. Alternatively, it was prayed that the appellant be released on the period already undergone.
3. Learned APP for the State on the other hand submits that the

impugned judgment suffer from no illegality and the appeal be dismissed.

4. The prosecution case springs out of the statement made by PW-5 SI H.C. Krishan wherein he stated that on 14th March, 2014 around 9:00 P.M., when he along with PW-7 Ct. Mungesh was patrolling at Kishan Ganj Railway Station, they noticed a boy aged 18 years carrying two bags on platform no. 01-02. Being suspicious, they enquired his name and address. At first, the boy revealed his name as Raju and later on as Bhim and stated that the two bags belonged to him. Since he was looking nervous, SI Jai Masih and Ct. Mungesh told him to accompany them. While they were walking towards Sarai Rohilla, they noticed a person in semi conscious condition standing by the pillar. On enquiring, he pointed out towards Bhim @ Raju and stated that while he was sitting with him in the train, Bhim @ Raju made him eat some biscuits containing some intoxicating substance and stole ₹9,000/-, his bag and his black and red coloured mobile phone. However, he stated that the two bags which Bhim @ Raju was carrying do not belong to him. On enquiring about the mobile phone, Bhim @ Raju took out the mobile phone from his right side pocket of his pant which was red and black in colour. The person in semi conscious condition, whose name was disclosed as Pankaj, identified the mobile phone and stated that it belonged to him. Thereafter, they took Bhim @ Raju and Pankaj to Kishan Ganj police station whereafter, Pankaj was taken to Hindu Rao Hospital. Consequently, FIR No. 31/2014 was registered under Sections 328/379/411 IPC at PS Sarai Rohilla Station on the statement of PW-1 Pankaj vide Ex.PW-6/A.

5. PW-1 Pankaj deposed in Court that on 13th March, 2014 he boarded the Awadh Assam Express train from Lalgarh for going to his native place.

Bhim @ Raju, who was also present in the train, told him that he is also a resident of Hazipur and requested him to eat biscuits and stated that they will eat dinner later. After eating the biscuits, Pankaj felt dizziness and later became unconscious. He gained some consciousness at Kishan Ganj Railway Station, Delhi. Bhim @ Raju along with his associate brought him down at the station. He further stated that he was carrying a bag, ₹9000/- cash which were found missing when he got down from the train. He was also having a mobile phone make Chinese which was removed by Bhim from his pocket. The mobile phone was recovered from the pocket of the pant of Bhim @ Raju. While he was de-boarding the train at the station, he saw two police officials, he narrated them the incident and pointed out towards Bhim @ Raju after which he again became unconscious. Thereafter, he regained consciousness in the hospital. During his cross examination, he deposed that he was having the journey ticket but he did not handover the same because the Investigating Officer did not ask for it. He stated that he had the purchase bill of mobile phone Ex.P-1 with him in the bag which was stolen on the date of incident. He denied the suggestion that the mobile phone recovered does not belong to him.

6. PW-2, Dr. Alok Kumar, Senior Resident, Hindu Rao Hospital, stated on 14th March, 2014 PW-1 Pankaj was brought in casualty by police with alleged history of unknown substance poisoning one day prior to the examination in the evening at 6 to 7 pm. He examined the victim and prepared the MLC, which is Ex. PW-2/A.

7. When Pankaj was admitted in the Hindu Rao Hospital on 14th March, 2014 at 12.45 PM he was conscious oriented and the alleged history given by him to the doctor was that unknown substance of poison was given to him on

13th March, 2014 at 6-7 pm. If the version of Pankaj is to be accepted that he was given poisonous substance at about 6-7 pm on 13th March, 2014, it is beyond apprehension that having stupefy the victim and taken his bag, money and mobile phone, the appellant would continue to travel with him till Delhi Kishan Ganj and also make Pankaj de-board the train at the platform. Further as per the FSL report, six pieces and one broken piece of the cream biscuits with chocolate colour cream which were sent to FSL were not found to contain any tranquilizer, lorazepam or alprazolam. Further though as per deposition of Pankaj he was carrying mobile phone of Chinese make, however, as per deposition of HC Krishan, PW-5 and Constable Mangesh, PW-7 the mobile phone recovered was of Hitech whereas as per the seizure memo, it was of Samsung make.

8. Considering the nature of evidence led and the version of Pankaj not inspiring confidence, this Court is of the opinion that the appellant is entitled to benefit of doubt. Consequently, the impugned judgment of conviction and order on sentence are set aside. The appellant who is in custody will be released forthwith by the Superintendent, Tihar Jail, if not required in any other case.

9. Appeal and the application are disposed of.

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

11. TCR be returned.

(MUKTA GUPTA)
JUDGE

MARCH 07, 2017
‘v mittal’