

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

+ **CRL.A. 306/2019**

Judgment reserved on : 06.12.2019

Date of decision: 16.09.2020

MOHD. MISTER

..... Appellant

Through: Appellant in person from JC with Mr.
Ravindra Narayan, Advocate.

Versus

STATE

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for
State with SI Vinod Kumar, PS
Anand Vihar Railway Station.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The appellant vide the present appeal assails the impugned judgment dated 08.02.2019 of the learned ASJ/FTC/E-Court/ Shahdara, Karkardooma Court, Delhi in Sessions Case No.7/2013, vide which the appellant herein was convicted for the offences punishable under Sections 328/379/34 of the Indian Penal Code, 1860 and the impugned order on sentence dated 15.02.2019 vide which the appellant was sentenced to undergo Rigorous Imprisonment for a period of 4 years and to pay a fine of Rs.2,000/- and in default of the payment of the said fine to further undergo

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Simple Imprisonment for a period of one month qua the offence punishable under Section 328/34 of the Indian Penal Code, 1860; to undergo Rigorous Imprisonment for a period of two (2) years and to pay a fine of Rs.2,000/- and in default of the payment of the said fine to further undergo Simple Imprisonment for a period of one month qua the offence punishable under Section 379 of the Indian Penal Code, 1860 with directions to the effect that both the sentences would run concurrently with the benefit of Section 428 of the Cr.P.C., 1973 having been given to the appellant. Vide the impugned order on sentence dated 15.02.2019, the learned Trial Court also imposed a compensation of Rs.10,000/- to be paid by the convict i.e. the appellant herein to the complainant namely Rajiv Kumar Singh and in default of the payment of the said compensation, the convict i.e. the appellant herein was directed to undergo Simple Imprisonment for a period of three months.

2. The nominal roll dated 18.10.2019 received in the instant case from the Superintendent Central Jail No.12, Mandoli, Delhi indicates that the appellant till the said date had undergone 1 year 8 months and 5 days of the imposed sentence.

3. Notice of the appeal was issued to the State. Submissions have been made on behalf of either side.

PROSECUTION VERSION

4. The allegations levelled against the appellant as per the charge of allegations framed against the appellant vide order dated 29.01.2013 of the learned ASJ/FTC/E-

Court/KKD /Delhi was to the effect that the appellant herein along with Qutub Alam on 05.11.2012 at about 2.00 am at the Sub-Way near the Reservation Hall, Anand Vihar Railway Station in furtherance of their common intention gave a stupefying substance laced in tea to one Rajiv Kumar Singh with intent to cause hurt to him or knowing it to be likely to cause hurt thereby to him and with an intent to commit/ facilitate the commission of theft and pursuant thereto committed a theft and a bag containing clothes, mobile phone bearing SIM No. 7503546709 and a purse containing Rs.1,790/- and some documents belonging to the said Rajiv Kumar Singh were recovered from Qutub Alam and that the appellant herein along with Qutub Alam, the co-accused had committed offences punishable under Section 328/34 of the Indian Penal Code, 1860 and Section 379/34 of the Indian Penal Code, 1860 to which charge of allegation that the appellant herein and the co-accused Qutub Alam pleaded not guilty and claimed trial.

5. During the course of the proceedings before the learned Trial Court, the co-accused Qutub Alam stopped appearing and was thus, declared a proclaimed offender vide order dated 16.12.2017.

6. The prosecution has adduced 14 witnesses in support of its contentions. As per Ex.PW5/H, the ruqqa on the basis of which the FIR was registered on receipt of DD No.3A dated 05.11.2012, the IO ASI Pratap Singh had gone to the spot where he met Constable Lalit, No.844 who was in the circulating area of Anand Vihar

Railway Station on patrolling and joined him in the proceedings and reached the spot i.e. the sub way near the Reservation Hall of the Anand Vihar Railway Station from where the victim was sent with Constable Lalit to the hospital and the accused persons were arrested i.e. Qutub Alam and Mohd. Mister i.e. the appellant herein from whose custody, the articles that had been recovered i.e. the tablets wrapped in a piece of paper from the pocket of the shirt of Qutub Alam, the co-accused apart from a black colour purse and a mobile phone make G-5 and from the appellant herein i.e. Mohd Mister a red coloured bag, and a voter I Card in the name of Rajiv Kumar Singh that is the complainant were recovered and the statement of HC Soran Singh was recorded and on the basis of the same, the FIR was sent for registration qua offences punishable under Sections 328/379/411/34 of the Indian Penal Code, 1860.

7. As per the statement of HC Soran Singh which forms the basis of the FIR he stated that he was on patrolling duty on the night intervening 4/5.11.2012 from 9:00 am to 9:00 pm and that whilst so patrolling, at about 1:00 am he met SI Ravinder Singh of the RPF, EFMB and Constable Vikas of the RPF Faridabad and they started patrolling together near the EFMB No.1 and at about 2:00 am, when they turned towards the Sub-way near the Reservation Hall when they saw that there was a boy lying down adjacent to a wall and there was a red coloured bag near that boy which was being picked up by one boy and he started walking towards the staircase

going to platform no.1 and the other boy who was empty handed and was standing near the boy who was lying down, started walking towards the staircase of platform towards no.2 of the Sub-way and when the police personnel found that boy who was lying down, sleeping and seeing the other two boys going towards different directions, a suspicion was aroused and thus, they ran and apprehended the boy climbing the staircase towards platform no.1 and also saw that the boy who was going towards the staircase of platform no.2 & 3 immediately started running, then the first boy who was apprehended was left with SI Ravinder Singh, and HC Soran Singh along with Constable Vikas apprehended the other boy who was climbing the other staircase. The said police personnel then made inquiries from the first boy with the bag who was going towards the platform no.1 and apprehended him and his name was learnt to be Mohd. Mister, s/o Salaudin i.e. the present appellant and the other boy's name was learnt to be Qutub Alam s/o Mohd. Tayyab and both these persons disclosed that they had given some stupefying substance in the tea to that boy who was lying down in the form of tablets and when he had become unconscious, the co-accused Qutub Alam had taken out his purse and his mobile phone and Mohd. Mister i.e. the appellant herein had left his bag containing his own clothes at the spot and picked up the bag belonging to that person and had started going out.

8. On the search of Qutub Alam being conducted from the left hand side rear pocket of his pant, a black coloured purse was recovered and from the front back pocket of his pant, a mobile phone was recovered which he disclosed that the same belonged to that boy who had become unconscious and from the pocket of the shirt of the co-accused Qutub Alam, 10 pink coloured tablets wrapped in a paper were recovered qua which Qutub Alam disclosed that there were stupefying tablets. The bag which was with Mohd. Mister i.e. the appellant herein, on checking was spotted to have been found to contain some old and new clothes and an old purse containing an Voter's I-Card in the name of Rajiv Kumar Singh issued on 05.08.2005 and the purse recovered from Qutub Alam, the co-accused also was stated to contain an I-Card in the name of Rajiv Kumar Singh, s/o Pawan Lal Singh, r/o 75, Village Dabri Basti, District Kishanganj issued on 16.01.2009. HC Soran Singh then informed the police station, as a consequence of which the Investigating Officer, ASI Pratap Singh along with Constable Lalit had reached the spot and the victim was sent to the hospital.

9. The victim Rajiv Kumar Singh in his testimony examined as PW-3 stated that he worked as a Carpenter in a company at Sector-134, Noida and also lived there and that on 04.11.2012 he had come to the Anand Vihar Railway Station at about 9.00 pm as he had to take a train i.e. the North-East Express to go to his village on 05.11.2012 and that the official at the ticket window told him that the ticket for the

train would be sold after 12 mid night and thus, he sat on the railway platform, then two boys came to him and met him at the platform and one of the boys told him that the second boy was his brother and that he was new to the place and asked him to take him alongwith him to the village. The complainant identified both the accused who were present before the learned Trial Court as being those two boys and stated that thereafter, all three of them slept at the platform and at about 12 mid night, he, the complainant got up to buy a ticket but the accused Qutub Alam (since declared a Proclaimed Offender) asked him to first take tea and then the said accused Qutub Alam went from there and brought two cups of tea and gave one cup to him i.e. to Rajiv Kumar Singh and another cup to the co-accused Mohd. Mister i.e. the appellant herein. PW-3 Rajiv Kumar Singh i.e. the complainant stated further that he took the tea and after five minutes of taking the tea, he became unconscious and that he regained his consciousness at the hospital but he was not fully conscious and stated that thereafter he left the hospital thinking that he may not miss the train and went to the Anand Vihar Railway Station, where he found his belongings missing and he thus made a telephone call from the STD booth to his brother Pramod Singh and his brother then telephonically informed his relatives at Delhi and his relatives Bhagat Singh and Pritam Singh came to the STD booth at the Anand Vihar Railway Station and took him to the Police Station, Anand Vihar and from there he was taken to the hospital as he was not fully conscious then and was provided treatment

at the hospital. He has further stated that the doctor took out Gastric lavage by putting a pipe in his abdomen and when he regained complete consciousness, he returned back to his house and the next day, he again went to the police station with Bhagat, his relative and the police recorded his statement.

10. *Inter alia*, PW-3 stated that the accused persons had stolen his bag containing his clothes, mobile phone bearing Aircel No.7503546709 and a purse containing Rs.1,790/- after giving him tea with some stupefying substance. He further stated that the stolen articles recovered by the police, were released to him on Superdari vide the superdarinama Ex.PW3/A on which he identified his signatures. He has further stated that on 14.11.2012, he was called to the Tihar Jail for the Test Identification Proceedings of the accused persons but they refused to join the TIP and on 17.11.2012, he had been called in the Court in Room No.61 where he saw the accused persons on the big screen and identified them.

11. *Inter alia* the witness i.e. the victim stated further that the police had taken the photographs of the recovered articles which he could identify. The photographs of Rs.1,790/- Ex.P-1/A-1 to Ex.P-1/A-4, the photographs of the mobile phone, the cash memo, the identity card, bag, purse Ex.P-2/A-1 to Ex.P-2/A-8 flagged on the record were shown to the witness, which he identified being the case property which was taken by the police at the time of the release of the case property to him on Superdari. He also produced the cash memo of the mobile phone in the case. *Inter*

alia this witness stated that two of his I-Cards were stolen by the accused and stated that he had gone to the Tihar Jail to identify the accused persons on 14.12.2012 and not on 14.11.2012 (as stated earlier) and that he identified the accused persons at the Karkardooma Courts on 17.12.2012. This witness produced the articles comprising the case property released to him on Superdari in his testimony on 05.09.2003 which were exhibited i.e. the mobile phone Ex.P1, bag Ex.P2, clothes collectively Ex.P3, the purse containing visiting cards and paper slips Ex.P4, election I-cards Ex.P5 & Ex.P6, the red coloured bag bearing particulars of this case which was shown to the witness and which was identified as being the bag belonging to the accused Ex.P7. On being cross-examined, on behalf of the appellant herein the witness had stated that the bag Ex.P7 was that which was with the appellant and categorically denied that the appellant herein has been falsely implicated at the behest of the Investigating Officer.

12. During his cross examination on 06.09.2013, this witness has stated that he had seen the accused persons for the first time after the incident on the big screen in the Court on 17.11.2012 but categorically stated that the police officials who recorded his statement were not present at that time when he identified the accused persons in the Court and denied that he was shown the photographs of the accused persons at the police station by the police officials. He has further categorically denied that any incident as stated by him had not taken place and denied that the

accused persons were falsely implicated at the instance of the police officials. He also denied that he had testified falsely. He stated further that he had not slept at the platform but the two accused persons had slept at the platform and stated that what he had stated in his examination in chief that all three of them slept at the platform was incorrect and stated that he had got up at about 12.00 midnight and had so stated to the police and was thus confronted with his statement under Section 161 of the Cr.P.C., 1973 Ex.PW3/DA wherein the specific time was not mentioned and it was only mentioned "*thodi der baad*".

13. HC Soran Singh who was examined as PW-5 in his testimony corroborated the prosecution version as set forth through the FIR and identified the appellant herein as being the person apprehended with a red coloured bag who was apprehended first and identified the co-accused Qutub Alam as being apprehended by him and HC Vikas and testified to the recovery of the black coloured purse and the mobile phone of the make G-5, 10 tablets of pink colour wrapped in a piece of paper from Qutub Alam and testified to the recovery of a Voter I-Card in the name of Rajiv Kumar Singh and clothes from the red coloured bag from the appellant herein and testified to the disclosures made by the two accused persons in relation to administering five tablets laced in tea to the boy who was lying unconscious; identification of the case property that had been recovered at the spot from the appellant herein and the co-accused as well as the red coloured bag belonging to the

appellant herein i.e. Ex.P7 and identified the pullanda containing a piece of paper in which orange coloured tablets were taken out which he identified to be the same tablets seized by the Investigating Officer. This witness categorically denied that all proceedings in this case were conducted at the police station, and denied that he had signed as a witness in order to support the case of the prosecution and denied that the accused persons have been falsely implicated.

14. PW-7, SI R.S. Kinha of PS Anand Vihar Railway Station who was then at the time of the incident working as an SI in the Railway Protection Force posted at Anand Vihar Railway Station also corroborated the prosecution version as set forth through the FIR in toto in relation to all material particulars and to the recovery of the belongings of the victim from Qutub Alam as well as from the appellant herein and also to the apprehension of the appellant herein and of the co-accused as also the aspect that the victim herein was lying in a sleeping condition and the accused persons had started leaving that place on seeing the police patrolling and then the appellant herein and the co-accused had been apprehended on suspicion by SI R.S.Kinha (PW-7), Constable Vikas and HC Soran Singh. This witness on being cross examined stated that the tablets recovered were 10 in number of a light orange colour. This witness denied that he had testified falsely and categorically stated that all proceedings were conducted at the spot and denied that there were no recoveries of any articles from the possession of any of the accused persons.

15. The Investigating Officer of the case ASI Pratap Singh who was examined as PW-13 also corroborated the prosecution version set forth in toto in relation to all material particulars.

16. The FSL result in the matter qua the gastric lavage of the victim was placed on the record as PW13/C. The said gastric lavage of the victim indicates that 10 orange coloured round shaped tablets on which it was printed WYETH had been received on 24.12.2012 from the SHO, PS Anand Vihar Railway Station and were examined from 02.01.2013 to 22.02.2013 and on chemical examination PLCT/MS examination, the exhibit i.e. Ex.P2 as well as the dirty creemish liquid with sediments volume 240.0 stated to be the gastric lavage were found to contain '*lorazepam*'. The said FSL result is admissible in evidence in terms of Section 293 of the Cr.P.C., 1973 and has not been challenged by the appellant and was exhibited as Ex PW 13/C by the Id. trial Court.

17. The other prosecution witnesses examined in the instant case also supported the prosecution version.

18. The learned Trial Court vide the impugned judgment held the prosecution version to have been wholly established.

PLEA OF DEFENCE

19. Through the statement under Section 313 of the Cr.P.C., 1973, the appellant denied the incriminating evidence led against him and pleaded that he had reached

the Anand Vihar Railway Station at 11.00 pm as he had to board a train i.e. the North-East Express for his native place i.e Kishanganj and also produced DW-1 Mohd. Mukhtar Alam who deposed that after leaving the appellant herein at the Anand Vihar Railway Station he had come back to his house at 10.00 pm and it was thus rightly observed by the learned Trial Court that the presence of the appellant at the Anand Vihar Railway Station and that he had to board a train i.e. the North-East Express, has not been disputed.

CONTENTIONS OF APPELLANT

20. The appellant vide the present appeal has submitted that the entire prosecution version is false and that the appellant has been wrongly convicted. It has *inter alia* been submitted on behalf of the appellant that the learned Trial Court has failed to appreciate that no public witnesses were joined in the proceedings despite the factum that at the railway platform, several people were present. It has been submitted further on behalf of the applicant that the recovered articles seized by the police officials were not sealed and that the learned Trial Court had failed to appreciate that this itself indicated the falsity of the allegations levelled against the appellant and it was for this reason that the appellant had not been convicted qua the alleged commission of the offence punishable under Section 411 of the Indian Penal Code, 1860. *Inter alia* it has been submitted on behalf of the applicant that a very improbable story had been put forth by the police officials who had allegedly

apprehended the appellant and the co-accused and that the learned Trial Court had failed to appreciate the fact that there was no recovery of any ticket effected at the instance of the appellant or the victim. It has been further submitted on behalf of the appellant that the learned Trial Court had also failed to appreciate the fact that the victim was taken to the hospital but was not available even to the police officials and ran away from the hospital on the same day when he had been got admitted to the hospital and appeared before the police along with his relative on the next day and the gastric lavage was then taken by the doctors and during the FSL examination, the intoxicating substance was found in the gastric lavage which clearly showed that the whole story was manipulated by the police officials to implicate the applicant.

21. It has further been submitted on behalf of the appellant that there were several contradictions in the statements of the witnesses and the prosecution also dropped two of its material witnesses and thus, the entire prosecution version stood falsified and had not been corroborated. It has also been submitted on behalf of the appellant that the Test Identification Parade of the appellant was a farce as the photographs of the appellant had already been taken and shown to the victim. *Inter alia* it was submitted on behalf of the appellant that the learned Trial Court had failed to appreciate the fact that the prosecution had failed to produce any record with respect to the timing of the train by which the victim was supposed to go to Bihar.

22. It has also been submitted on behalf of the appellant that the learned Trial Court had not taken into account the aspect that the witnesses who were produced by the prosecution were wholly tutored. It has been submitted further on behalf of the appellant that several of the documents prepared by the Investigating Officer were faulty, in as much as, they had been prepared even without registration of any FIR and without any investigation conducted prior to the registration of the FIR and such investigation is no investigation in the eyes of law.

CONTENTIONS OF THE STATE

23. On behalf of the State, the learned APP for the State has submitted written submissions and has submitted that the prosecution version stood established through the testimonies of the prosecution witnesses that were examined, in as much as, the victim examined as PW-3 had strenuously supported the prosecution version; that the registration of the FIR stood established through the testimony of PW-4 HC Dushyant; that the testimony of HC Soran Singh was consistent in relation to all material particulars; that the testimony of SI R.S.Kinha examined as PW-7 who was on patrolling duty with Constable Vikas at about 1.00 am when they had met PW-5 HC Soran Singh whilst on patrolling stood corroborated through the testimony of PW-5 HC Soran Singh; the CDRs in relation to the call details of Rajiv Kumar Singh PW-3 and other related documents were submitted to have been established through the testimony of PW-9 Sh. Shishir Malhotra, Nodal Officer,

Aircel Ltd., which documents were proved as Ex.PW9/A to Ex.PW9/F; that the first MLC at 3.15 am exhibited as Ex.PW2/A stood established through the testimony of PW-2 Dr. Ranitesh, Medical Officer, LBS hospital; the testimony of Dr. Sachin, Casualty Medical Officer, LBS Hospital examined as PW-1 also established the preparation of the second MLC at 9.45 pm when Dr. Sachin, Casualty Medical Officer, LBS Hospital had examined who deposed that on 05.11.2012, he medically examined Rajiv Kumar S/o. Pawan Lal, who was brought by HC Devender for medical examination for the purpose of collection of gastric lavage. Ex.1 the gastric lavage of the victim PW-3 and the tablets Ex.2 recovered from the co-accused as per the FSL report dated 22.02.2013 were found to contain '*lorazepam*'.

24. It was further submitted on behalf of the State that the testimony of PW-10, Sh. J.P.Nahar, Relieving Magistrate, KKD Courts, established that the appellant herein had refused to participate in the TIP proceedings and thus, an adverse inference has essentially to be drawn against him. It was also submitted on behalf of the State that the testimony of ASI Pratap Singh, the Investigating Officer who conducted the investigation and prepared the documents in relation to the investigation and had reached the spot after receipt of DD No.3A along with Constable Lalit Kumar also stood established.

25. The records produced by HC Jaya Chander examined as PW-14 were submitted to also establish the registration of DD No.22-B dated 04.11.2012, DD

No. 3-A, DD No. 26-B and DD No. 29-B dated 05.11.2012, copies of which are on the record of the Trial Court as EX.PW14/A to Ex.PW14/D to submit that the prosecution version stood established to have occurred as recorded through the DD entries referred to hereinabove.

26. It was further submitted on behalf of the State that whereas the time of the incident as per the information received that had been given by HC Soran Singh was around 2.00 am on 05.11.2012, the defence witness produced by the appellant had stated that he had left the Anand Vihar Railway Station at 10.00 pm on the night intervening 04/05.11.2012 and it has thus been submitted on behalf of the State that the contention raised on behalf of the appellant that the testimony of DW-1 Mohd. Mukhtar Alam would bring forth an *alibi* in favour of the appellant, did not support the plea of innocence of the appellant.

ANALYSIS

27. On a consideration of the submissions that have been made on behalf of either side and on a perusal of the trial Court record, it stands established that the appellant was at the Anand Vihar Railway Station on the night intervening 04/05.11.2012 as he had to board a train i.e. the North-East Express for his native place i.e. Kishanganj. This is borne out through the testimony of DW-1 Mohd. Mukhtar Alam produced by the appellant himself, which thus corroborates the

statement under Section 313 of the Cr.P.C., 1973 of the appellant in reply to Query

No.4, wherein, it was stated to the effect:-

“Q.4 It is in evidence against you that after 5 minutes of taking the tea, PW-3 became unconscious and during that time PW-5 HC Soran Singh alongwith PW-7 SI Ravinder Singh Kinha and PW-12 Ct. Vikas reached there and they saw that a boy was lying on the floor and you lifting a red colour bag lying near PW-3 and started walking towards platform no.1 and your co-accused Qutub Alam was standing near PW-3. What have you to say?”

Ans. It is incorrect. I reached at the Anand Vihar Railway Station at 11 pm as I had to board a Train ‘North-East Express’ for my native place i.e. Kishanganj. I was sleeping at a distance from the complainant and police officials took me to Chowki alongwith some other persons and their they demanded money to release me but since I was not having money, I was falsely implicated in this case.”

28. Furthermore, the testimony of Rajiv Kumar Singh, the victim in the instant case also establishes the factum of the appellant being present at the spot; the testimony of PW5 HC Soran Singh establishes the apprehension of the appellant with the red coloured bag belonging to the victim PW-3 on the night intervening 04/05.11.2012 at the Anand Vihar Railway Station; the testimony of SI R.S.Kinha examined as PW-7 also corroborates the said prosecution version when he states that the appellant on the night intervening 04/05.11.2012 at the Anand Vihar Railway Station had lifted a black and red coloured bag lying near the place where the person was lying on the ground and that he started going towards platform no.1 with that person lying on the ground being the victim PW-3 and having also identified the bag recovered from the appellant as being that belonging to PW3 the

victim. The apprehension of the appellant whilst he was going towards platform no.1 of the Anand Vihar Railway Station also stands established through the testimony of PW-7.

29. The factum of the appellant herein being near the victim when he was sleeping and carrying away the bag belonging to the appellant, stands established through the testimony of PW-5 HC Soran Singh and PW-7 SI R.S.Kinha. The factum that the appellant was apprehended at the spot and the victim was in an unconscious state, is also established through the testimony of PW-11 Constable Lalit Kumar and likewise through the testimony of PW-13, the IO ASI Pratap Singh. The factum of the victim PW-3 having been administered with stupefying substance in the form of tablets containing '*lorazepam*', stands established through the FSL result of the gastric lavage of the appellant that was forensically analyzed.

30. Though, the prosecution version and the disclosure statement allegedly made by the appellant and the co-accused (since declared a proclaimed offender) are to the effect that the tablets had been administered by the co-accused by placing it in a cup of tea given to the appellant, the same does not suffice to exonerate the appellant in relation to the alleged commission of the offence punishable under Section 328/34 of the Indian Penal Code, 1860. This is in as much as the circumstances of the commission of the crime and the spot of the occurrence itself establish that the victim was at the spot and that he had been given tea by Qutub

Alam (since declared a proclaimed offender) but that the appellant was also present at the spot and after five minutes of taking the tea, he had become unconscious and after he regained consciousness, he was at the hospital and thereafter he went back to the Anand Vihar Railway Station and he found his belongings missing. The factum that the appellant was present at the spot having held to have been established as observed hereinabove as rightly concluded by the learned Trial Court, coupled with the factum that the appellant was apprehended whilst he was trying to escape as testified by PW-5 HC Soran Singh; coupled with the factum that the appellant was apprehended with the red coloured bag belonging to the victim PW-3 who has identified the same and the contents thereof, the concert and common intention of the appellant and the co-accused Qutub Alam stands wholly established qua the commission of the offence punishable under Section 328/34 of the Indian Penal Code, 1860 as well as qua the commission of the offence punishable under Section 379/34 of the Indian Penal Code, 1860.

31. The contentions raised on behalf of the appellant qua the aspect of non joinder of public witnesses and alleged lack of identification in the circumstances of the case where he was apprehended virtually red handed at the spot by the police at the Anand Vihar Railway Station cannot be accepted. Furthermore, in as much as the seal of the exhibits examined at the FSL were, in fact at the time when opened

for examination, the factum of '*lorazepam*' having been administered to the victim by the co-accused in prior concert with the appellant herein also stands established.

CONCLUSION

32. In the circumstances, it is held that there is no infirmity in the impugned order whatsoever of the learned Trial Court whereby the appellant has been held guilty for the commission of the offences punishable under Sections 328/379/34 of the Indian Penal Code, 1860.

33. As regards the quantum of sentence, it is essential to observe that during the course of the hearing of the present appeal, it has been established through the status report of the SHO, PS Anand Vihar Railway Station dated 26.08.2019 that there is no previous involvement or conviction of the appellant. As observed elsewhere hereinabove, as per the nominal roll dated 18.10.2019 received from the Deputy Superintendent Central Jail No.12, Mandoli, Delhi, the appellant as on 18.10.2019 has been in custody for a period of 1 year 8 months and 5 days and thus, till date he is in custody for a period of 02 years 07 months 04 days.

34. In the circumstances, it is considered appropriate as the jail conduct of the appellant is also satisfactory that the sentence imposed of RI for a period of 4 years qua the commission of the offence punishable under Section 328/34 of the Indian Penal Code, 1860 is reduced to a period of three (3) years and to pay a fine of

Rs.2,000/- as already ordered vide the impugned order on sentence and in default of the payment of the said fine to further undergo SI for a period of one month.

35. As regards the offence punishable under Section 379/34 of the Indian Penal Code, 1860, the appellant has already undergone the Rigorous Imprisonment for a period of two (2) years as imposed thereby as also the default sentence of one month of Simple Imprisonment in default of the payment of the fine. The benefit of Section 428 of the Cr.P.C., 1973 having been given already to the appellant by the Ld.Trial Court which is upheld.

36. Furthermore, the compensation awarded of Rs.10,000/- to be paid to the victim by the appellant and in default of payment of the same by the appellant that he has to undergo three (3) months of Simple Imprisonment is upheld, which period apparently the appellant has already undergone.

37. The appeal is disposed of accordingly.

ANU MALHOTRA, J.

SEPTEMBER 16, 2020
'neha chopra'