

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

CRA-S-1461-SB-2007 (O&M)

Date of decision: 29.09.2022

Nisha @ Babby

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Manoj Kaushik, Advocate for the appellant.

Mr. Vijesh Sharma, Addl. A.G., Haryana.

H.S. MADAAN, J.

1. Appellant Nisha @ Babby, an accused in FIR No.157 dated 01.12.2005, for offences under Sections 328, 379, 411 IPC, registered with Police Station GRP, Faridabad was tried by Addl. Sessions Judge, Faridabad and on completion of trial, vide judgment dated 09.07.2007, she was convicted for offences for which she was booked and in terms of order passed on 10.7.2007, she was sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs.1000/-; in default of payment of fine, to further undergo simple imprisonment for two months under Section 328 IPC; she was further sentenced to undergo rigorous imprisonment for a period of one year under Sections 379 and 411 IPC. All the sentences were ordered to run concurrently.

2. Briefly stated facts of the case, as per prosecution story are

that criminal machinery in this case was set into motion by complainant Ms. Sheetal Aggarwal, resident of Delhi, who in the written complaint submitted by her to SHO, Police Station GRP, Mathura Junction, stated that on 26.11.2005, she had accompanied her sister Smt. Rekha Aggarwal wife of Harish Aggarwal, resident of Mumbai to Railway Station New Delhi to see her off; Rekha Aggarwal boarded the women compartment of train called Paschim Express; they came across a woman namely Nisha resident of Jiwan Nagar Ashram, New Delhi (accused), who was sitting in that compartment near sister of the complainant; the complainant asked Nisha to look after her sister; at about 5.25 pm, the train left New Delhi Railway Station; on the same day, at about 9.30 pm, the complainant received a telephonic message from her brother in-law Harish Aggarwal that Rekha Aggarwal was admitted in a district hospital at Mathura in an unconscious condition; on coming to know about that, the complainant along with one Master Jameer Ahmed went to GRP, Mathura from where she was sent to Civil Hospital, Mathura; on reaching there, the complainant saw her sister Rekha Aggarwal admitted in ladies ward in an unconscious condition.

On the next day, i.e. 27.11.2005, when Smt. Rekha Aggarwal regained consciousness, she told the complainant that Nisha who was sitting near her and when the train reached at Railway Station Faridabad, had mixed some intoxicant substance in her tea and on drinking that, she became unconscious and then Nisha had stolen her topas, diamond ring, Rs.300/- and some other documents; while complainant along with

Master Jameer Ahmed was proceeding towards GRP, they saw accused Nisha near booking window, in front of the gate at about 9.00 PM; on seeing the complainant, the accused tried to hide; the complainant raised alarm; on hearing that, two police constables and some persons from public came and apprehended Nisha; Nisha was brought to the police station, where a report was lodged; from possession of Nisha, purse of Smt. Rekha Aggarwal containing ticket, one cutter, one visiting card of Sheetal tailors, licences, photos of Smt. Rekha Aggarwal, ear rings (studs), gold chain, two passport size photos, pinkish intoxicant powder etc., were recovered; after registration of the FIR, the investigation in the case started; the accused was formally arrested in this case; the powder recovered from the accused was sent to FSL, Madhuban for analysis and examination and as per report received there from, the powder was found to have intoxicant content.

3. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court; on receipt of challan in the Court of Chief Judicial Magistrate, Faridbad, she supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C., and then finding that offence under Section 328 IPC was exclusively triable by the Court of Sessions, learned CJM, vide detailed order dt. 09.02.2006, committed the case to the Court of Sessions from where it was entrusted to the Court of Addl. Sessions Judge, Faridabad.

On receipt of challan, finding a prima facie case, charge for

offences under Sections 328, 379 and 411 IPC was framed against the accused, to which she pleaded not guilty and claimed trial.

4. During the course of prosecution evidence, prosecution examined 14 PWs as detailed below:-

PW-1 Complainant Sheetal Aggarwal, supported the prosecution story on material aspects.

PW-2 Constable Jitender, stated that on 27.11.2005, he was posted at GRP Police Station, Mathura and on that day, he along with Constable Surender was on platform duty. At about 9.00 PM, on hearing alarm, they reached at booking window of Railway Station Mathura; on hearing that; one lady was making noise that another lady had given poison to her sister; then they arrested such lady and took her to the police station; he identified the accused to be the woman who had been apprehended by them; according to this witness, when the accused was searched, one black purse containing one gold chain, topas (studs), one visiting card of Sheetal tailors, two packets of pink colour, one photo of Smt. Rekha Aggarwal, were recovered which were taken into possession vide a recovery memo Ex.P2, attested by him; he identified the articles recovered i.e. black purse Ex.P3, topas Ex.P4, photo Ex.P5, cutter Ex.P6, DL of Smt. Rekha Aggarwal Ex.P7, visiting card Ex.P8, ticket Ex.P9, currency notes of denomination of Rs.10/- Ex.P10 and P11 and coins of Rs.2/- and one coin of denomination of Rs.1/-.

PW-3 Dharambir Singh, EHC GRP Faridabad a formal witness tendered his affidavit Ex.P13.

PW-4 HC Ram Lal, stated that on 06.12.2005, he along with ASI Jeet Singh had gone to GRP Mathura in connection with the investigation of the case; there MHC GRP Mathura handed over a sealed parcel with sample seal and as per writing on the envelope, it contained Rs.24/-, one topas with chain (gold), photos, DL and one ticket which had been taken into possession, vide memo Ex.P14 by ASI Jeet Singh, attested by him.

PW-6 HC Prahlad Singh, another formal witness tendered his affidavit Ex.P16.

PW-7 ASI Jeet Singh from GRP Faridabad, the Investigating Officer of this case deposed regarding the investigation conducted by him proving various documents.

PW-8 Sh. Maya Ram Singh, Line Officer, GRP Ambala stated that on 01.12.2005, while he was posted as SI/SHO GRP Faridabad, on that day, he received a zero FIR from GRP Mathura through Constable Chhitar Parshad, on the basis of which, he had registered present FIR Ex.P19.

PW-9 Sh. Rajiv Bhanott, JE stated that on 16.01.2006 he was posted as JE, Railway Station Faridabad, and on that day, due to some work, he had gone to GRP Police Station, Faridabad and in his presence, ASI Jeet Singh had opened an envelope, which was sealed and the seal was broken in his presence; out of envelope, two small packets containing powder were recovered which were put into small tin box(es) and sealed with seal of 'JS', whereas the remaining articles were again put

in an envelope and sealed with seal of 'JS', those were taken into possession, vide memo Ex.P18.

PW-10 Smt. Rekha Aggarwal stated that on 26.11.2005, she was going to Bombay from New Delhi Station and at about 5.30 pm, her sister Sheetal Aggarwal and Master Jameer had come to see her off; she had boarded train for Bombay; the accused had also boarded that train; she was travelling in general compartment; another woman, who was travelling in same compartment gave her (this witness) a cup of tea; thereafter, she became unconscious; she stated that accused did not give her anything in the tea, rather she helped her later on.

At request of Public Prosecutor, she was declared a hostile witness and permission was granted to the Public Prosecutor to cross-examine her, which opportunity he availed off.

PW-11 SI Sher Jang Singh stated that on 16.12.2005, he was posted as SI/SHO, PS GRP Faridabad, and on that day, accused Nisha was produced in the Court of CJM, Faridabad by UP Police and on receipt of that information, he went there and sought permission to interrogate the accused; permission was granted and accordingly, he interrogated Nisha, who suffered a disclosure statement that on 26.11.2005, while she was going in Pashchim Express train to Bombay, she mixed some intoxicant in the tea, giving it to Rekha Aggarwal and when Rekha Aggarwal become unconscious, she took her ear rings, gold chain, diamond ring, purse containing Rs.300/-, DL, visiting card and photo and on 27.11.2005, she had alighted at Mathura Railway Station

with stolen articles; thereafter, she was arrested by Mathura police at Mathura Railway Station and they got recovered all the articles except diamond ring; he proved the disclosure statement of accused as Ex.P17.

PW-12 SI D.P. Singh, GRP Mathura, who had carried out the investigation in this case, recording statements of witnesses, going to the spot preparing site plan of place of occurrence etc., deposed in that regard.

PW-13 Constable Surinder Singh, who on 27.11.2005 along with Constable Jitender was on duty at Mathura junction station, deposed on similar lines as that of PW-2 Jitender.

PW-14 SI Jeet Ram, GRP Line, Ambala City stated that on 22.11.2006, while he was posted as SI/SHO, PS GRP Faridabad, on that day, after completion of investigation, he had prepared the challan.

The prosecution relied upon various documents and thereafter, closed its evidence.

5. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing in prosecution evidence against the accused were put to her but she denied the allegations contending that she was innocent and had been falsely implicated in this case and that no recovery was effected from her possession.

The accused did not lead any evidence in defence.

6. After conclusion of trial, the accused was convicted and sentenced as mentioned above.

7. Feeling aggrieved by the judgment of her conviction and order of sentence, the accused had preferred an appeal before this Court which was taken up on 02.08.2007, when it was Admitted for regular hearing and sentence awarded to the appellant/accused was ordered to be suspended during pendency of the appeal subject to her furnishing bonds to the satisfaction of CJM, Faridabad. Now the appeal has come up for final hearing.

8. I have heard learned counsel for the appellant/accused, learned State counsel besides going through the record.

9. In this case, the main thing to be seen is as to whether it was appellant/accused Nisha @ Babby who had administered poisonous substance mixed in tea to Smt. Rekha Aggarwal, wife of Harish Aggarwal, sister of the complainant with an intention to steal various belongings including jewellery and other valuable articles of Rekha and dishonestly took away a lady purse of black colour, one topas (studs), one gold chain, Rs.24/- and a railway ticket from Delhi to Bandra, Bombay, a visiting card, DL, two packets of powder weighing 02 gm each from Smt. Rekha Aggarwal out of her possession.

To prove its charge, the prosecution has examined complainant Sheetal Aggarwal as PW-1, who supported the prosecution story on material aspects, contending that on 26.11.2005, she had gone to Railway Station New Delhi to see off her sister. Smt. Rekha Aggarwal who was to go to Bandra Terminus, Bombay by Paschim Express and while they were standing on the platform waiting for the train, at about

4.35 pm, Nisha-accused came to them and started talking with them saying that she was also going to Bombay. This witness identified accused Nisha @ Babby in the Court, stating that she had told Nisha that her sister Smt. Rekha Aggarwal was also going to Bombay and she should take care of her and then Smt. Rekha Aggarwal and Nisha had boarded the ladies compartment. She also deposed that at about 9.30 pm, she received a telephonic call from her brother in-law Harish Aggarwal to the effect that Rekha was admitted in hospital in Mathura in an unconscious condition as informed to him by GRP, Mathura and thereafter, the complainant along with Master Jameer went to Mathura GRP Police Station and thereafter Civil Hospital, Mathura where Smt. Rekha Aggarwal was admitted in an unconscious condition and was being treated and on the next day, when Smt. Rekha Aggarwal regained consciousness, she told her that the accused had firstly given her chapati and vegetable and thereafter, provided tea in which she had mixed some poisonous substance as a result of which she (Smt. Rekha Aggarwal) become unconscious. The complainant stated that accused had removed gold ear rings, gold chain, one diamond ring, a sum of Rs.3000/- currency notes and other articles from person of Smt. Rekha Aggarwal and thereafter, they were going to GRP Police Station to lodge a report. They found accused standing on the Railway Station Mathura near the ticket window and on seeing them, she tried to run away, however, on an alarm being raised by them, two police officials Jitender and Surinder Singh came and overpowered the accused, who was taken to police station

where topas (studs), one chain and two notes of Rs.10/- denomination, one cutter with which gold was cut and two packets containing some poisonous substance were recovered. She stated that she had lodged a report with the police in that regard by submitting complaint Ex.P1.

From her testimony, it stands amply established that accused along with Smt. Rekha Aggarwal had boarded Paschim Express for going to Bandra Terminus, Bombay, sitting in ladies compartment. When the said train left New Delhi and further that Smt. Rekha Aggarwal had become unconscious for the reason of having been administered some poisonous substance. She was admitted in Civil Hospital Mathura and when she regained consciousness, she told her sister-the complainant that she was made to drink tea laced with some poisonous substance by the accused and thereafter, she became unconscious and she was deprived of her valuable articles. Furthermore, the accused, who as stated by her to complainant and Smt. Rekha Aggarwal, was having her destination at Bandra, Bombay had got down at Railway Station, Mathura and on seeing the complainant, she tried to run away but was overpowered and when taken to police station, valuable articles belonging to Smt. Rekha Aggarwal along with poisonous/intoxicant substance had been recovered from her. Such conduct of accused shows her guilty intention for various reasons. Firstly, if accused was to go to Bombay, then whether there was occasion for her to get down at Mathura. Secondly, why did she became nervous on seeing the complainant and tried to run away. Thirdly, stolen articles of Smt. Rekha Aggarwal along with poisonous/intoxicant

substance had been recovered from possession of accused at Police Station GRP, Mathura, which she could not account for.

10. PW-2 Constable Jitender and PW-13 Surinder Singh had supported the prosecution story as regards their overpowering accused who was trying to run away on an alarm being raised by complainant at platform of Railway Station Mathura on 27.11.2005 at about 9.00 pm., the accused being taken to Police Station GRP Mathura and then various articles stolen from Smt. Rekha Aggarwal along with packets of poisonous having been recovered from her.

Smt. Rekha Aggarwal-victim appearing as PW-10 did support the prosecution story on various aspects except on the point of accused having offered tea laced with some poisonous/intoxicant substance to her rather stating that another woman who was travelling with them in the compartment gave her a cup of tea and thereafter, she became unconscious and the accused present in the Court had not given her anything in tea, rather she had helped her later on. She was declared a hostile witness at the instance of learned Public Prosecutor and learned Public Prosecutor was given an opportunity to cross-examine her. She was confronted with her statement made to the police Ex.P20. Though, she denied having made such statement to the police but it seems that such PW had resiled from her statement either due to fear, threat or some allurements having been given to her by the accused so as to help her in avoiding conviction and sentence in this case. However, such act and conduct of Smt. Rekha Aggarwal cannot be appreciated and her resiling

from her previous statement made to the police does not result in causing any dent in the prosecution case. The law is well settled that statement of a witness who shows hostile tendencies is not be discarded outrightly rather that portion of his/her statement, which supports the prosecution story, can certainly be taken into consideration.

The *maxim falsus in uno falsus in omnibus* that is false in whole, false in part is not made applicable by the Courts in India, rather the Courts are required to separate chaff from the grain i.e. truth from the falsehood and for that reason, the fact that Smt. Rekha Aggarwal had tried to give clean chit to the accused, does not help the accused in any manner in view of overwhelming incriminating evidence both oral as well as documentary adduced by the prosecution to prove guilt of the accused.

11. The other evidence led by the prosecution corroborates the prosecution story on material aspects. The investigation in this case has been carried out in a fair and impartial manner. The IO had no reason to involve the accused in this case falsely or to depose against her to secure her conviction. From the statement of complainant PW-1 Sheetal Aggarwal, which is supported on several aspects by PW-10 Rekha Aggarwal, though not fully, in view of other corroborative evidence brought on file by the prosecution and in view of the fact that accused was found in possession of the poisonous/intoxicant substance, which she had allegedly mixed in the tea that she had made Rekha Aggarwal to drink, it stands amply established that it was accused who had mixed some intoxicant substance in the tea which she had made Rekha

Aggarwal to consume and thereafter, she had removed jewellery articles and other belonging of Smt. Rekha Aggarwal from her person without her consent to cause wrongful gain to herself and wrongful loss to Smt. Rekha Aggarwal. As per report received from FSL, Madhuban Ex.P12, the powder recovered from possession of accused was found to have Lorazepam (a tranquilliser) which is an intoxicant substance.

12. PW-5 Dr. B.P. Saraswat, Medical Officer, District Jail Mathura, who on 26.11.2005 while posted as Emergency Medical Officer at District Hospital Mathura, at about 9.00 pm had examined Smt. Rekha Aggarwal, who was in semiconscious condition, stated that in his opinion, this was case of suspected poisoning.

13. Here it may be mentioned that accused does not claim the ownership of recovered articles. Under Section 114 of the Indian Evidence Act, the Court may presume that the accused who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. In this case, the accused had been found to be in possession of the stolen articles belonging to Smt. Rekha Aggarwal, soon after the theft and she has been unable to account for her possession for the same. As such she is taken to have committed theft of such articles.

Section 378 IPC deals with offence of theft, providing that whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Term 'dishonestly' is defined by Section 24 of IPC as that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly.

Section 23 IPC defines wrongful gain as gain by unlawful means of property to which the person gaining is not legally entitled and wrongful loss caused by unlawful means of property to which the person losing it is legally entitled.

It stand adequately established on record that accused had removed various articles from the person of Smt. Rekha Aggarwal without her consent while she was in state of her unconsciousness, as a result of accused having made her drink tea laced with intoxicant/poisonous substance for the purpose of causing wrongful loss to Smt. Rekha Aggarwal and wrongful gain to the accused. Thus, the prosecution had successfully proved its charge against the accused for offences under Sections 328 and 379 IPC. The trial Court has convicted the accused for an offence under Section 411 IPC as well, which deals with offence of dishonestly receiving/retaining stolen property. Once the accused was convicted for offence of theft punishable under Section 379 IPC, she could not possibly be convicted and sentenced for offence under Section 411 IPC of dishonestly receiving/retaining the stolen property because when it is proved that it was the accused who had committed theft of the articles, there was no occasion for her dishonestly receiving stolen articles.

14. The impugned judgment of conviction passed by the trial Court is quite detailed, well reasoned, does not suffer from any illegality or infirmity. It is based upon proper appraisal of evidence and correct interpretation of law except for infirmity therewith as pointed out above with regard to conviction of accused simultaneously for offences under Sections 379 and 411 IPC. The impugned judgment is upheld as far as conviction for offences under Sections 328 and 379 IPC, whereas, conviction and sentence of the accused for an offence U/s 411 IPC is set aside.

As regards the sentence part, the accused has been sentenced to undergo rigorous imprisonment for 03 years only. Keeping in view the gravity and seriousness of offences in which the appellant indulged, the imprisonment awarded to her is certainly not on very high side, since offence under Section 328 IPC carries imprisonment upto 10 years. The trial Court has been very lenient with the appellant/accused in the matter of sentence. There is no occasion to reduce the sentence any further, otherwise, it will send a wrong signal in the society that one can commit a serious crime and then get away with a very light punishment. In that way, the potential criminals would be encouraged to tread the path of crime, which is highly undesirable.

Therefore, the appeal is disposed of as allowed partly inasmuch as the impugned judgment is upheld as regards conviction of accused for offences under Sections 328 and 379 IPC, whereas, conviction for offence under Section 411 IPC is set aside. Accordingly,

the order of sentence is modified inasmuch as the sentence of appellant/accused for offences under Sections 328 and 379 IPC is affirmed whereas it is set aside as regards offence U/s 411 IPC.

15. The appellant/accused, who is on bail in terms of the order passed by this Court, the said order is withdrawn and appellant is directed to surrender before Chief Judicial Magistrate, Faridabad within a week from today, failing which learned CJM, would issue warrants of arrest to secure her presence and send her to jail to undergo the remaining sentence. Necessary intimation be sent to the Court concerned for information and compliance.

29.09.2022

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No