

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Siddhartha Roy Chowdhury

CRA 35 of 2019

Tapash Banerjee @ Sk Safikul Islam @ Bhola
Vs.
The State of West Bengal

For the Appellant : Ms. Puja Goswami

For the State : Mr. Joydeep Roy
Ms. Sujata Das

Heard on : 3rd April 2023

Judgment on : 3rd April 2023

The Court:

This criminal appeal challenges the judgment and order of conviction passed by the learned Additional Sessions Judge, Kandi, Murshidabad in S.T. No. 03(12) of 2017, G.R. case No. 1511 of 2017 under Section 328, 379 of the I.P.C. The learned Trial Court after considering the evidence adduced by prosecution witnesses was pleased to hold that Tapash Banerjee @ Sk. Safikul Islam @ Bhola committed an offence within the meaning of Section 328 of the I.P.C. and thus sentenced him to suffer imprisonment for four years and to pay a fine of Rs.5,000/-. He was further sentenced to suffer imprisonment for one year and to pay a fine of Rs.5,000/- with a default clause.

Briefly stated on 14th August, 2017 Partha Sarathi Saha informed the Officer-in-Charge of Kandi Police Station that on 10th August, 2017 he along with Sri Pranab Kumar Dutta who happens to be his neighbor boarded a Government bus from Dharmatala for Kandi. Pranab Kumar Dutta was sitting in front of him and another gentleman was there by his side. Partha Sarathi Saha was sitting right behind those two persons. Pranab Kumar Dutta and the gentleman sitting next to him were chatting. The said passenger took out a packet of biscuits and offered the same to Mr. Dutta. After the bus reached Bahara, Pranab Kumar Dutta was feeling unwell and lost his sense. The passenger took away the gold finger ring, gold chain and cash of Rs.30,000/- from the money bag of Pranab Kumar Dutta. Having found Partha Sarathi Saha watching the misdeed the passenger fled away. Partha Sarathi Saha raised alarm, the bus was stopped. Senseless Pranab Kumar Dutta was taken to Kandi Hospital by the car which was there behind the bus and he was admitted there. Subsequently he was transferred to a nursing home in Calcutta. According to the informer, co-passenger of Pranab Kumar Dutta snatched everything from him by administering something to stupefy Pranab Kumar Dutta. As the information disclosed offence cognizable in nature Kandi P.S. case No. 674 of 2017 was registered, police took up investigation and submitted charge sheet. On 7th December, 2017 trial commenced and the accused person stood the trial by pleading innocence. To bring home charges prosecution examined eight witnesses. The learned trial Court after considering the evidence on record was pleased to pass the judgment impugned.

Ms. Puja Goswami, learned counsel representing the appellant draws my attention to the charge framed on 7th December, 2017 which indicates that learned Trial Court while framing charge stated to the accused person that he gave the victim Biscuits and after eating the Biscuits the victim became seriously ill. The accused mixed some stupefying or intoxicating or unwholesome drug or other thing in the biscuits. While the victim Pranab Kumar Dutta as P.W. 2 stated that the accused gave him chocolate to eat, addressing him as uncle, and after initial reluctance he took the same. Thereafter accused brought out a packet of biscuit. He tore the biscuit packet, he himself took two biscuits from the packet and offered the packet to the victim P.W. 2 and the victim consumed two biscuits. According to Ms. Goswami, the accused person being the appellant was never made to understand the offence committed by him. While framing charge learned Trial Court did not make any whisper about the usage of chocolate. The packet of biscuits was sealed and P.W. 2 himself stated that the packet was torn by the accused person who took out two biscuits for himself and then offered the packet to the victim. The accused person was in his sense. Therefore there is every reason to presume that biscuit did not cause any mischief to the victim. As accused was never made to understand that due to the chocolate offered to the victim the victim lost his sense, that evidence of P.W. 2 can not be taken into consideration. It has caused serious prejudice to the accused person and the judgment should not be allowed to remain in force so far charge under Section 328 of the I.P.C. is concerned. It is further contended that the incident took place on 10th August, 2017 and the accused person had also accompanied the victim to the hospital along with Partha Sarathi Saha, the defacto complainant. After four

days the accused person was arrested or was shown to have been arrested from Kandi bus stand. The arrest memo itself suggests that accused person is a man of North 24 Parganas and he was not a resident of Kandi. Therefore it cannot be said by any stretch of imagination that accused was waiting at Kandi bus stand four days after the alleged incident keeping the stolen articles in his pocket. The evidence when considered from the point of view of human probability, the narrative of recovery of stolen articles appears to be absolutely baseless and frivolous.

True it is the Doctor who attended the victim at Kandi Hospital conducted a kit test from the urine of the accused person whereby existence of 'Benzo Diazepine' came to the fore. The Benzo Diazepine is a drug that causes depression of consciousness. In absence of any evidence to build the nexus between the administration of drug upon the victim and the accused person it cannot be said with all certainties that the drug was administered by none else but the accused person.

Though Ms. Das, learned counsel for the State submits that the articles were recovered from the possession of the accused person and those were duly identified by the victim before the learned Magistrate, in my view the factum recovery itself, is veiled with shadow of suspicion for the simple reason that the accused person, a non-resident of Kandi, was arrested from bus stand after four days of incident, and he kept gold ornaments as well as money in his pocket, sounds improbable.

As I have already pointed out that learned Trial Court failed to frame the charge properly which has caused serious prejudice to the accused person. That apart considering the evidence from the point of view of the human probability the recovery of articles from the possession of the accused person on 14th August, 2017

does not appeal to my sense. There is no nexus between the accused and the victim so far administration of drug is concerned. The prosecution case as made out at best can give birth to serious suspicion against the accused person which cannot be considered as proof beyond doubt.

Consequently the appeal succeeds. The judgment and order of conviction stands quashed. The appellant may be set at liberty, if not wanted in any other case and if he is still in correctional home.

Let a copy of the order be sent to learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury,J)