

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

328

CRA-S-1131-SB-2014 (O&M)

Date of Decision: 30.01.2023

AMANDEEP @ KALU

-Appellant

Versus

STATE OF HARYANA

-Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Ms. Mehak Sawhney, Advocate
Legal Aid Counsel for the appellant.

Mr. Anmol Malik, DAG, Haryana.

KULDEEP TIWARI, J.

1. Through the present appeal, the appellant-accused has challenged the verdict of conviction, and, order of sentence dated 25.01.2014, passed by the learned Additional Sessions Judge, Kurukshetra, in case FIR No.55 of 29.10.2013, registered under Sections 392, 328, 379 and 506 of Indian Penal Code (hereinafter referred to as 'IPC'), at Police Station G.R.P. Kurukshetra, District Kurukshetra, whereby, he has been convicted for the offence punishable under Section 328 of IPC, and, has been sentenced to undergo rigorous imprisonment for a period of five years, and, to pay a fine of Rs.50,000/-, and, in default of payment of fine, to further undergo simple imprisonment for a period of six months.

2. The prosecution story unfolds from the statement, Ex.P2, of Udaharn Dass (PW2) (hereinafter referred to as 'complainant'), as

recorded by A.S.I., Shish Pal (Investigation Officer/PW10), on 29.10.2013, at about 15:30 hours, while being present at Platform No.01, Railway Station, Kurukshetra. The relevant extract of statement, Ex.P2, is extracted hereunder:-

“I have been residing here for the last approx. one year. There was a special worship going on at Gita Kunj Ashram, Jyotisar, for the last three months, which completed on 27.10.2013. In this special worship, I got a total amount of Rs.30,000/- for the services provided by me. I was also having with me one plastic sac, which contained some household clothes and fruits. Yesterday, on 28.10.2013, at about 06:40 am, I had to board Jhelum Express and for that purpose, I reached Railway Station, Kurukshetra at about 05:00 am. Sanjay Dass and Rahul had come with me, in an auto-rickshaw, from the Ashram to see off me at Railway Station. I was carrying one bag of Ashram, which had Rs.30,000/-, my voter card, PAN card, mobile phone having number 89503-97745. I bought a ticket for Mathura from Railway Station and sat on a cemented bench at platform No.1, in front of R.P.F. Police Post, Kurukshetra, awaiting the train. In the meantime, a Sikh person, in the apparel of a Nihang and carrying a Kirpan, came to me and asked me as to where I would go. I replied to him that I will go to Mathura and the said person stated that he will go to Agra and therefore, we will be companions in the journey. Thereafter, the said Sikh person left a bag with me and went to take tea and he came back with two cups of tea. He offered tea to me but I showed reluctance to consume it, however, despite that, he forcibly administered tea to me. The taste of the tea was different and it was much bitter. Thereafter, that Nihang went away and one Baba, wearing

red cloth/muffler on his head, came and sat near me, who was a companion of the said Nihang. After a while, the said Nihang came dressed in a white kurta-pyjama and a black cloth/parna tied over his head, who asked me to accompany him to platform No.2, but, I replied that there is some time in arrival of the train. Upon this, he threatened me to accompany him silently and in case I played clever, he will kill me. In the meanwhile, I got intoxicated and the said Nihang and his companion took away my bag of currency notes and I fell unconscious on the railway lines. At about 10 o'clock, Pandits Rishi Raj, Bhawani Shankar, Achal Kaushak, Naresh Krishan, Vikas, Dinesh, Gautam, Mahesh and Shyam Sharma came there from Ashram as they also had to go to Mathura. They lifted me in an unconscious state and took me to Gita Kunj Ashram. I have gained consciousness today on 29.10.2013 and have come to you (police). The aforesaid Nihang and his companion have stolen my bag containing Rs.30,000/-, PAN card, voter card, under the threat to kill me. Strict legal action be taken against them. I can identify both the aforesaid persons on seeing them.”

3. On the basis of the above statement, initially an FIR under Sections 379 and 506 of IPC was registered against two unknown persons. Thereafter, investigation was carried out in the matter. The Investigation Officer made efforts to search the accused through the CCTV footage of the cameras installed at Police Post, R.P.F., Kurukshetra, wherein, one person was found offering tea to the complainant and accompanying him to Platform No.2, whereupon, his photograph was captured from the CCTV footage. Upon being shown his photograph, he was identified by the complainant and thereafter,

pamphlets were prepared on 02.11.2013, which were affixed at public places. The pamphlets were proved on record as Ex.P44. However, on 08.11.2013, the complainant got recorded his supplementary statement, whereupon, offences under Sections 328 and 392 were added in the instant FIR. In his supplementary statement, the complainant made improvements to the extent that he claimed himself to be not in his full senses on 29.10.2013, and, that only one accused was there, who administered tea to him and thereupon robbed him. He omitted the role attributed by him to a companion of the accused, as narrated in his original statement. He further stated therein that he was treated by Dr.Suba Singh (R.M.P.), who was examined as PW8 by the prosecution, during trial. It would be apt to note here that the supplementary statement of the complainant, dated 08.11.2013, was never placed before the trial Court, however, the reference thereof was made in the Final Report prepared under Section 173 of Cr.P.C. During the course of investigation, on 09.11.2013, the Investigation Officer along with his co-officials, and, the complainant, went to Railway Station, Kurukshetra, in search of the accused, where the complainant identified the appellant-accused and accordingly, he was arrested. Upon conducting his personal search, a Kirpan was recovered, which was taken into possession, vide recovery memo Ex.P37. During interrogation, the appellant-accused suffered a disclosure statement, Ex.P9, confessing commission of the aforesaid incident, and, that he can get demarcated the place where he had kept concealed the robbed amount of Rs.25,000/-, out of total Rs.30,000/-. In

pursuance of his disclosure statement, he led the police and got recovered Rs.25,000/- from underneath the earth, near a *Peepal* tree in the forest, near Railway Godown. The recovered money was taken into possession vide recovery memo Ex.P10. A rough site plan was prepared and the statements of witnesses, under Section 161 Cr.P.C., were recorded. After completion of the investigation, Final Report under Section 173 Cr.P.C. was filed before the concerned Illaqa Magistrate.

4. Finding the case exclusively triable by the court of Sessions, the learned Illaqa Magistrate committed the case to the court of Sessions vide committal order dated 02.01.2014.

5. Finding a prima-facie case, the appellant-accused was charge-sheeted for commission of offences punishable under Sections 328 and 392 of IPC, to which he pleaded not guilty and claimed trial.

6. The prosecution, in order to substantiate the allegations against the appellant-accused, examined ten witnesses in total. The appellant-accused, in his statement recorded under Section 313 Cr.P.C., though, opted to lead evidence in his defence, however, no witness was examined on his part. He also denied all the allegations, as levelled against him, and, pleaded innocence, as being falsely implicated in the present case.

7. The learned trial Court, after conclusion of trial, acquitted the appellant-accused qua the charge framed under Section 392 of IPC, however, convicted him for commission of offence punishable under Section 328 of IPC, vide the impugned judgment.

8. The learned counsel for the appellant-accused averred that the charge for commission of offence under Section 328 of IPC has not been proved against the appellant-accused, beyond reasonable doubt. Further, while referring to the material improvements, as made by the complainant in his supplementary statement dated 08.11.2013, compared to his original statement (Ex.P2), the learned counsel for the appellant-accused made a submission that such material improvements cause a dent to the prosecution story. She also argued that there is no report of any forensic or medical expert with regard to examination of blood, urine, or, vomit samples, as the same were admittedly never collected, to substantiate that the complainant was ever administered any intoxicant/stupefying substance by the appellant-accused.

9. On the other hand, the learned State counsel submitted that the complainant, when stepped in the witness box as PW2, has fully corroborated and established the case of the prosecution. He also relied upon the statement of Dr. Suba Singh (PW8), who had treated the complainant, and, also upon the statement of the Investigation Officer (PW10), to submit that it stands proved, beyond reasonable doubt, from the testimonies of all these three witnesses, that the complainant was administered an intoxicated tea by the appellant-accused. Concluding his arguments, he submitted that the learned trial Court has rightly appreciated the evidence led by the prosecution and held the appellant-accused guilty for commission of offence punishable under Section 328 IPC.

10. This Court has examined the entire record of the learned trial Court as well as the impugned judgment, rendered by the learned trial Court. However, let us re-examine, in nutshell, the testimonies of all the star witnesses of the prosecution for just adjudication, and, to clear the clouds covering the truth.

(i) As per prosecution, the appellant-accused had purchased tea from Santosh Kumar, Tea Vendor, and, administered the same to the complainant by mixing some stupefying substance in it. To prove this allegation, the prosecution examined Santosh Kumar as PW1, who deposed that on 09.11.2013, he was called at Police Station GRP, Kurukshetra, to identify a person from CCTV footage. He was shown photograph of one Baba to identify whether he was the same person who purchased tea from him on 28/29.10.2013, however, he failed to identify the appellant-accused and did not support the case of the prosecution. Thereupon, he was declared hostile and was put to cross-examination by learned Public Prosecutor, however, nothing could be elicited therefrom, which could go in favour of the prosecution. In his cross-examination also, he continued to maintain his stand of not identifying the appellant-accused.

(ii) The complainant stepped in the witness box as PW2, who deposed on the same lines as of his statement made to the police, however, he did not narrate anything

with regard to recording of his supplementary statement on 08.11.2013.

(iii) Sanjay Dass was examined as PW3 by the prosecution, who deposed that on 28.10.2013, he had dropped the complainant at Railway Station, Kurukshetra, and, on the same day, he received information regarding the complainant lying unconscious at Railway Station, whereupon, he went there and took him back to Ashram where treatment was provided to him. He was not an eye-witness and his testimony is not such, which may help the prosecution, as the same falls within the category of “hearsay” evidence, and therefore, cannot be taken into consideration.

(iv) To prove the treatment history of the complainant, prosecution examined Suba Singh as PW8, who deposed that upon receipt of a telephonic information from Gitakunj Aashram, Jyotisar, on 28.10.2013, regarding sickness of a Pandit, he went there and medico-legally examined the Pandit (complainant), who was in an unconscious condition. A couple of persons, who had brought the complainant to Aashram, informed him that the complainant was administered a tea adulterated with some stupefying substance. Thereupon, to treat the complainant, he was administered salty lemon water, after which, he

vomited twice-thrice and some yellow coloured substance came out. Thereafter, he gave the complainant injections of B-Complex vitamin and provided an antacid syrup. In the rest of his deposition, he stated what he heard from others. However, when he was put to cross-examination, he admitted that he is only a compounder and was an associate with a private doctor, and, he also admitted that no blood, urine or vomit samples of the patient (complainant) were preserved. It further transpires from his cross-examination that he did not refer the complainant to Government Hospital because his condition was not such, which required reference to a Government Hospital. He also voluntarily stated that in case of acidity, or, consumption of some stupefying or poisonous substance, yellow coloured substance comes out as vomit.

11. On a conjoint reading of all the afore-discussed testimonies, this Court finds that the prosecution has miserably failed to prove the charge, under Section 328 of IPC, against the appellant-accused, beyond reasonable doubt, for the following reasons:-

(i) First of all, Santosh Kumar, Tea Vendor, did not support the prosecution's case, as he resiled from his statement (Ex.P1) made to the police, and, also denied to identify the appellant-accused as the one who purchased tea from his vend. Moreover, despite being put to cross-

examination by the learned Public Prosecutor, nothing favourable surfaced for the prosecution.

(ii) Secondly, there is an absolute dearth of any forensic or medical report to substantiate the allegations qua adulteration of the tea, which was allegedly administered to the complainant, with any stupefying substance.

(iii) Thirdly, the reason behind lack of any forensic or medical evidence qua adulteration of tea, or, consumption thereof is that no blood, urine or vomit samples were ever collected or preserved by Suba Singh (PW8), who had treated the complainant on 28.10.2013. Therefore, non-collection of such samples proves fatal to the prosecution's case because in the absence of any expert's report, it cannot be concluded that the complainant was actually administered any stupefying substance, especially considering the treatment as provided by Dr. Suba Singh (PW8), i.e. injection of Vitamin B-Complex and an antacid syrup.

(iv) Fourthly, there are material improvements in the version, as spelt out by the complainant in his supplementary statement, vis-a-vis, the number of persons involved in the alleged occurrence. In his initial statement (Ex.P2), the complainant alleged the occurrence to be committed by two two persons, whereas, in his supplementary statement, he alleged only one person was there, who robbed him.

12. Apart from the testimonies of aforesaid witnesses, the learned trial Court has also relied on the statement of appellant-accused, recorded under Section 313 Cr.P.C., based whereupon, the appellant-accused has been held guilty for commission of offence punishable under Section 328 of IPC. The relevant extract of such statement reads as under:-

“When I went for tea, complainant also asked me to bring tea. My bag was lying with Pandit when I went to take tea. It is true that we all including the complainant took tea together on platform of Railway Station, Kurukshetra but I did not mix anything in the tea and I was totally surprised to hear about the incident when I arrived at Railway Station, Kurukshetra after four days. Immediately, after taking the tea, I left the place. The complainant initially did not identify me before the police but later on when police officials told the complainant that he would not get the amount then he agreed to identify me. I am innocent and witnesses have deposed falsely against me.”

13. Perusal of the above extracted statement only establishes that the appellant-accused had brought tea for the complainant on his request and they both had consumed tea together while sitting at railway platform. Insofar as the above admission qua bringing tea by the appellant-accused is concerned, the same does not absolve the prosecution from discharging the onus of proof regarding the tea, which was consumed by complainant, being adulterated with any stupefying or intoxicant substance. Moreover, as already discussed above, there is no

concrete evidence available on record, either forensic or medical, to support the version of the prosecution, except the bald statement of the complainant himself.

14. Therefore, considering the totality of the facts and circumstances, this Court has no hesitation to conclude that the prosecution has miserably failed to prove its case against the appellant-accused and therefore, the appellant-accused deserves the benefit of doubt.

15. In view of the above, the present appeal is hereby **allowed**. The impugned verdict of conviction, and, order of sentence, are hereby set aside and the appellant-accused is acquitted from the charges framed against him.

(KULDEEP TIWARI)
JUDGE

30.01.2023
devinder

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No