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

+ CRL.A. 672/2017 and CRL.M.A. 10696/2023

CHANDESHWAR @ SUNIL

.....Appellant

Through: Mr. Anwesh Madhukar and Mr. Ishat
Singh, Advocates
Appellant in person through V.C.
from jail

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

08.09.2025

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1. The present appeal has been instituted under Section 374 Cr.P.C. against the impugned judgment of conviction and order on sentence, both dated 19.11.2016, passed by the learned ASJ-02, South East, Saket Courts, New Delhi in Sessions Case No. 1794/2016 arising out of FIR No. 54/2014 registered under Sections 328/379 IPC at P.S. Hazrat Nizamuddin.

Vide the impugned order on sentence, the appellant herein was sentenced to undergo rigorous imprisonment for a period of 5 years alongwith fine of Rs. 2,500/-, in default whereof he would undergo simple imprisonment for 3 months, for the offence punishable under Section 328/34 IPC; and rigorous imprisonment for a period of 2 years alongwith fine of Rs.1,500/-, in default whereof he would undergo simple imprisonment for 1 ½ months, for the offence punishable under Section 379/34 IPC. Both sentences were directed to run concurrently and benefit under Section 428



Cr.P.C. was granted to the appellant.

In addition, compensation of Rs.15,000/- was directed to be paid to the complainant, to be split equally between the appellant herein and his co-convict. In case of default of payment of compensation to the victim, the appellant was directed to undergo simple imprisonment for a further period of 6 months.

2. After completion of investigation, the chargesheet was filed by the police, and the Trial Court thereafter framed charges under Sections 328/379/34 IPC against the appellant, to which he pleaded not guilty and claimed trial.

3. The prosecution's case in a nutshell is that the appellant and his co-accused, acting in furtherance of their common intention, administered an intoxicant to the complainant by mixing it in his tea, thereby rendering him unconscious, and thereafter stole from him Rs.600/- in cash and two mobile phones. On regaining consciousness, the complainant found his belongings missing. On the basis of secret information, the appellant and his co-accused were apprehended, and upon their search, several mobile phones and Ativan tablets were recovered. The complainant subsequently identified the appellant in judicial TIP proceedings, as well as identified his mobile phones when produced in Court.

4. The prosecution examined 14 witnesses in support of its case, including the complainant, the medical witness, and the investigating officials. The complainant/PW-2 gave a consistent and cogent account of being served tea laced with intoxicant and thereafter the theft of his phones and cash, and correctly identified the appellant as one of the assailants both in Court and during TIP. His testimony remained firm and unshaken during



cross-examination. The examining doctor/PW-7 proved the MLC of the complainant (Ex.PW-7/A) and opined that the complainant had been administered an intoxicant, thereby lending medical support to the ocular account. The investigating witnesses, PW-4/HC *Parvir Singh*, PW-5/HC *Neeraj Kumar*, and PW-12/SI *Pappu Lal*, who were members of the raiding party, corroborated the apprehension of the appellant and his co-accused and the recovery of stolen articles at their instance, and their testimonies remained unchallenged on material particulars.

5. The statement of the appellant was recorded under Section 313 Cr.P.C., wherein he denied the allegations and claimed false implication, alleging that the recovered phones had been innocently purchased from one *Debu*, a shopkeeper. However, the appellant did not lead any defence evidence. The defence plea that the recovered mobile phones had been innocently purchased was a bald assertion, unsupported by evidence, as *Debu* was not examined in defence, and the plea was rightly rejected.

6. On a perusal of the record, this Court finds that the complainant has given a consistent and cogent account of the incident, and both the administration of the intoxicant as well as the subsequent theft stand established as acts committed in furtherance of the common intention of the appellant and his co-accused. His testimony is duly corroborated by the recovery of stolen articles at the instance of the appellant and his co-accused, the seizure memos prepared contemporaneously, the medical evidence opining that the complainant had been administered an intoxicant, and the judicial TIP proceedings. Taken together, the aforementioned circumstances form a complete chain pointing towards the guilt of the appellant. The appellant was accordingly convicted for the offences



punishable under Sections 328/34 IPC and 379/34 IPC.

7. The appellant has been produced through VC from Central Jail No. 3, Tihar, New Delhi by the concerned Jail Warden. At this stage, learned counsel for the appellant, on instructions from the appellant, states that the appellant, being fully aware of the consequences, does not wish to challenge his conviction under the aforesaid Sections; however, he prays that the sentence awarded to him be modified to the period already undergone by him. The appellant, appearing from Central Jail No. 3 through VC and identified by concerned Jail Warden, makes the same submission. He further states that he would deposit the amount towards fine and compensation.

8. Even otherwise, this Court, based on the material produced and keeping in mind that the complainant duly identified the appellant in his testimony, and the medical evidence corroborates the version of the complainant, and the role of the appellant being consistently stated, concurs with the findings of the Trial Court and finds that no grounds to interfere with the conviction are made out. Consequently, the conviction of the appellant is upheld qua the offences under Sections 328/379/34 IPC.

9. It is submitted that the appellant is aged about 40 years, has a wife, son, and an aged mother who is fully dependent on him since the passing of his father. The offence in question pertains to the year 2014. The latest nominal roll dated 09.08.2025 on record indicates that the appellant, as on 08.02.2018, had already undergone 3 years, 10 months, and 29 days of incarceration, and earned 5 months and 4 days of remission, against his sentence of 5 years rigorous imprisonment. His conduct in jail has been reported as satisfactory. The appellant's sentence in the present case was suspended vide order dated 14.09.2017, however, the nominal roll reflects



that the appellant stands convicted in a few other cases, and is presently under incarceration at CJ-03, Tihar Jail, Delhi, serving his sentence in relation to one of them.

10. Keeping in view all of the aforesaid, this Court is of the considered view that the ends of justice will be served if the appellant's substantive sentence in the present case is modified to the period already undergone by him. However, the same shall be subject to the appellant paying the fine of Rs.4,000/- and his share of the compensation to be paid to the complainant (Rs.7,500/-), as imposed by the Trial Court. The appellant shall pay the same within a period of four weeks, failing which he shall undergo the sentences in default of payment of fine imposed by the Trial Court.

11. The present appeal is partly allowed in the above terms.

12. A copy of this order be communicated to the Trial Court.

13. A copy of this order be communicated to the concerned Jail Superintendent for serving upon the appellant.

MANOJ KUMAR OHRI, J

SEPTEMBER 8, 2025

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