



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

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+ **CRL.A. 120/2016**

SHASHANKAppellant

Through: Mr. O.N. Sharma, Advocate.

versus

STATE (GNCT OF DELHI)Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Sharmila Yadav, P.S. Gulabi Bagh.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed under Section 374(2) read with Section 382 Cr.P.C. against the judgment dated 21.11.2015 and order on sentence dated 16.12.2015 passed by learned ASJ-04 (Central), Tis Hazari Courts, Delhi, in SC No. 27/2014 arising out of FIR No. 195/2011 registered under Sections 328/379 IPC at P.S. Kashmere Gate.

The petitioner was convicted and sentenced for having committed the offences punishable under Sections 379/419/420/468/411 IPC. Vide the impugned order on sentence, the appellant was sentenced as under:-

- (i) U/s 379 IPC - to undergo SI for 1 year along with fine of ₹5,000/- and in default, to undergo SI for 1 month.
- (ii) U/s 419 IPC - to undergo SI for 1 year along with fine of ₹5,000/- and in default, to undergo SI for 1 month.



- (iii) U/s 420 IPC - to undergo RI for 2 years and 4 months along with fine of ₹5,000/- and in default, to undergo SI for 2 months.
- (iv) U/s 468 IPC - to undergo RI for 2 years and 4 months along with fine of ₹5,000/- and in default, to undergo SI for 2 months.
- (v) U/s 411 IPC - to undergo SI for 1 year along with fine of ₹3,000/- and in default, to undergo SI for 1 month.

All sentences were ordered to run concurrently and the benefit under Section 428 Cr.P.C. was granted to the appellant. The sentence of the appellant was suspended during pendency of the present appeal vide order dated 25.02.2016.

2. The prosecution case, as presented before the Trial Court, is that the complainant/PW-1, Constable *Devender Kumar*, was returning home from duty around midnight on 07.10.2011 when, near ISBT, a boy approached him stating that his friend had met with an accident and that their car had run out of petrol. The complainant parked his motorcycle in ISBT parking, accompanied the boy to the nearby petrol pump in the boy's car, paid Rs.200/- for petrol, accepted a cold drink offered by him, consumed the same, and thereafter became unconscious. He regained consciousness around 05:00 a.m. the next morning to find himself sitting in a TSR at Sarai Kale Khan. He then discovered that his watch, mobile phone, wallet, ATM card, identity card, driver's licence, and his motorcycle (including Rs.73,000/- kept in its toolbox) were missing. During investigation, it emerged that his Axis Bank debit card had been used for multiple transactions during the night at various petrol pumps. On 30.10.2011, the



appellant herein was arrested by police officials from P.S. Kotla Mubarakpur in connection with FIR No. 244/2011, whereupon the complainant's debit card and driver's licence were recovered from him. He was then arrested in connection with the present FIR and other relevant recoveries were effected thereafter pursuant to his disclosure.

3. Learned counsel for the appellant challenges the prosecution story as improbable. It is contended that the complainant/PW-1, being a trained police constable, acted in a manner wholly inconsistent with his training. The suggestion is that it is unnatural for him to have voluntarily sat in the car of a stranger around midnight, accompanied him to a petrol pump, paid for petrol for him, and consumed a cold drink offered by him, without any suspicion or verification. Learned counsel highlights that PW-1 did not call PCR at any point. He further points out that PW-1 refused medical examination, due to which the allegation of an intoxicating substance being administered to him stands wholly unproved. It is submitted that PW-1 claims to have woken up in a TSR at Sarai Kale Khan, but no TSR driver was examined by the prosecution. He further points out that PW-5, the parking attendant at ISBT, did not identify the appellant as the person who had removed the motorcycle from the parking. The petrol pump employees did not identify the appellant either. The handwriting expert gave no opinion connecting the signatures on the recovered credit slips to the appellant. Learned counsel has further submitted that the recoveries effected in the present case are doubtful, as no public witnesses were joined for the same.

4. Learned APP for the State supports the impugned judgment and highlights that the complainant categorically identified the appellant in TIP and that the debit card and driver's licence of the complainant were



recovered from the appellant upon his arrest in connection with another case.

5. The prosecution examined 19 witnesses in support of its case. The material witnesses are the complainant/PW-1; PW-5, the parking attendant at ISBT parking; PW-7 (recovery witness); PW-15 (arresting officer in FIR No. 244/2011), PW-17 (the I.O. of the present case); and PW-19 (learned MM who conducted the appellant's TIP). The remaining witnesses are largely formal in nature.

6. PW-1/Ct. *Devender Kumar*, the complainant, deposed in harmony with the version contained in his complaint (Ex. PW-1/A). He stated that a boy stopped him near ISBT and sought help, that he accompanied him to a petrol pump, paid Rs.200/- for petrol, consumed a cold drink offered to him, and thereafter became unconscious. He stated that he regained consciousness at 05:00 a.m. the next morning in a TSR at Sarai Kale Khan and discovered that his valuables and motorcycle were missing. He deposed that he had kept Rs.73,000/- in the motorcycle toolbox which he had collected as rent of the property of his sister. He further deposed that he later identified the appellant in TIP.

In cross-examination, PW-1 admitted that the I.O. had warned him against not getting his medical examination done, yet he still refused to undergo the same due to his personal wishes. He deposed that he had stated regarding the colour, number, and make of the car in his statement given to the I.O., and he was confronted with his statement wherein the same was not recorded. He conceded that he had no document to substantiate his claim of carrying Rs.73,000/- in his motorcycle's toolbox. He admitted that the petrol pump and parking were only half a kilometre apart.



7. *Brijesh Kumar Shukla*, who worked as the parking attendant at the two-wheeler parking at ISBT at the relevant time, was examined as PW-5. He stated that the motorcycle bearing no. UP 14M 2691 was parked around 12:25 a.m. in the intervening night of 07/08.10.2011 and a receipt was issued for the same. He deposed that at about 06:00 a.m., PW-1 came up to him and informed him that the motorcycle he had parked there the previous night was missing. The witness checked his record and showed PW-1 that the relevant slip had been returned and the motorcycle had accordingly been removed from the parking. PW-5 categorically stated that he could not identify the person who had removed the motorcycle from the parking.
8. PW-7/HC *Vijay Kumar* stated that he accompanied the I.O. to Naraina where the motorcycle, along with other articles like wallet, keys etc. were recovered. He identified the case property in Court.
9. PW-15/SI *Satish Lohia*, who arrested the appellant in connection with FIR No. 244/2011, deposed that during the personal search of the appellant, the debit card and driver's licence of PW-1 were recovered.
10. PW-17/Inspector *Ajay Singh Negi*, the I.O. of the present case, deposed as to various aspects of the investigation. In cross-examination, he admitted that PW-1 refused medical examination and that no public witnesses were joined at any stage during recoveries.
11. PW-19, learned MM, proved that the appellant participated in TIP and PW-1 identified him.
12. The appellant, in his statement under Section 313 Cr.P.C., denied all incriminating circumstances put to him and asserted that he had been falsely implicated in the present case. He stated that he had been involved in a quarrel with police officials and had consequently been falsely implicated in



about 4-5 cases, out of which he claimed to have been acquitted in four, while two cases were still pending. He did not lead any evidence in his defence.

13. I have heard the learned counsels for the parties and gone through the record.

14. In my view, the conduct of PW-1 is the foundation of the case. PW-1 is a trained police constable, who had amassed nearly two decades of experience with the Delhi police at the time of the incident. The prosecution narrative suggests that he voluntarily sat in a stranger's car at midnight, went to a petrol pump with him, paid for petrol, and consumed a cold drink offered by him. The complainant did not call PCR at any point. This conduct, in the absence of any other explanations, appears unusual and inconsistent with the caution expected of a trained police officer, especially at midnight. The prosecution has not provided any explanation for PW-1's conduct. His refusal to undergo medical examination, when such an examination could have conclusively proved the administration of an intoxicating substance to him, a fact which goes to the very root of the present matter, casts a shadow of doubt over the veracity of his claims. It merits emphasis that any person alleging that he was drugged and subsequently robbed would, in the normal course, readily undergo medical examination to verify the effect of the alleged substance administered to him and ensure his future well-being. As things stand, the cause of the alleged unconsciousness remains unexplained and there is no medical or forensic evidence on record to corroborate the alleged administration of an intoxicating substance.

15. PW-1 stated that he regained consciousness in a TSR at Sarai Kale



Khan. No TSR driver was examined by the prosecution to explain how PW-1 reached there and in what condition. Again, it is only reasonable to expect that a policeman, upon regaining consciousness in a TSR without any recollection of how he had reached there and upon simultaneously discovering his valuables missing while suspecting that he had been drugged and robbed, would make some inquiry from the TSR driver or at least seek basic clarification from him.

16. PW-5, the only independent witness near ISBT i.e., the parking lot attendant, clearly stated that he could not identify the person who had removed the complainant's motorcycle from the parking.

17. The prosecution also did not examine any person from the first petrol pump station at Mall Road, which the complainant had visited alongwith the appellant, who could have testified about both of them seen together. There is no proof of any transaction that had taken place at the said petrol pump. The transactions at various petrol pumps establish that the debit card was used. However, none of the petrol pump witnesses identified the appellant. The credit slips contain signatures, but the handwriting expert opined that no definite opinion could be provided linking the signatures in question with the specimen signatures of the appellant. The authorship of the said signatures, thus, remains an open question. The petrol pump witnesses do not establish who used the card, who presented it, or who signed the slips. The complainant's narration of events is also doubtful as he has claimed that the appellant met him at ISBT.

18. The recoveries present further weaknesses. The debit card and driver's licence were allegedly recovered from the appellant at the time of his arrest in connection with FIR No. 244/2011, wherein no public witnesses



were joined. The subsequent recovery at Naraina also took place without the joining of any public witnesses.

19. It is also worth mentioning that the distance between the petrol pump where the complainant statedly got petrol filled in the appellant's car and the ISBT parking where the complainant purportedly parked his motorcycle, is concededly only about half a kilometre. Rather, it has come in the deposition that the complainant was statedly a resident of Civil lines which infact, is in between the two spots. The prosecution story unfolding as told within this short distance appears highly unlikely. The prosecution case ultimately lacks corroboration on multiple fronts.

20. The complainant's version is not credible and taking the aforementioned circumstances cumulatively, the said deficiencies create significant gaps in the case of the prosecution and the benefit of the doubt in the peculiar facts and circumstances of the present case enures to the appellant.

21. In view of the above discussion, this Court finds that the prosecution has failed to establish the guilt of the appellant beyond reasonable doubt.

22. The present appeal accordingly succeeds and the impugned judgment and order on sentence are hereby set aside.

23. The personal bond furnished by the appellant stands cancelled and his surety is discharged.

24. A copy of this judgment be sent to the Trial Court and the concerned Jail Superintendent.

**MANOJ KUMAR OHRI
(JUDGE)**

NOVEMBER 24, 2025

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