2025:DHC:4967

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

Reserved on: April 30,2025
Pronounced on: June 12, 2025

\+ CRL.A. 266/2013

ASHOK KUMAR .....Appellant

Through: In person with Mr. Sumer Kumar Sethi & Ms. Dolly Sharma, Advocates

Versus

STATE .....Respondent

Through: Mr. Tarang Srivastava, Additional Public Prosecutor for State with SI Parveen Kumar PS Malviya Nagar

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 has been filed on behalf of the appellant assailing the correctness of the Judgment dated 17.01.2013 and Order on Sentence dated 24.01.2013 passed by the learned Additional Session Judge (ASJ) Saket Courts, New Delhi in Sessions Case No. 82/2011, titled as ***State Vs. Ashok Kumar***, whereby the appellant has been held guilty of the offence under Section 379 read with Section 34 of the Indian Penal Code, 1860 ('IPC') and has been sentenced to undergo sentence of rigorous imprisonment ('RI') for a period of one year.

BRIEF FACTS

2. The brief facts encapsulated in a nutshell, as emerging from the record, are that, on 05.08.2005, at about 09:50 PM, the appellant, Ashok Kumar, along with co-accused Vineet, was brought to the Police Station Malviya Nagar by the complainant, Ram Kishore, and his brother, Shailender Kumar, and was handed over to the Investigating Officer. It was alleged that the appellant and the co-accused had, on 31.07.2005, administered some biscuits to the complainant and his brother, as a result of which they lost consciousness, and were thereafter robbed of a sum of ₹10,000/-.

3. Thereafter, on the same day, i.e., 05.08.2005, the statements of the complainant and his brother were recorded by the police. As per the complainant, he was a resident of House No. 39, Village Rajpur. On 31.07.2005, he and his brother were waiting for a bus at Lado Sarai Bus Stop, *en-route* to the Railway Station to travel to their native village. At that time, a TSR stopped near them, in which two boys were already seated and were offered to share the TSR ride, claiming that they were also heading towards the Railway Station. During the course of the ride in TSR, while they were conversing with each other, one of the said boys offered them some biscuits, taken out from a packet. Upon consuming the said biscuits, the complainant and his brother lost consciousness. In the meantime, the said boys, thereafter, stole the bag of the complainant and his brother, containing ₹10,000/- and two sets of pant and shirt, belonging to each one of them. It was further alleged that the complainant and his brother were

thrown out of the TSR near Lodhi Garden while still being in an unconscious state.

4. Upon regaining the consciousness, the complainant and his brother returned to their rented residence at Rajpur and found that an amount of Rs. 10,000/- is missing from their bag. They, thereafter, initiated a search for the said boys at the same spot. However, on 04.08.2005, they spotted the two boys sitting in a TSR and identified them as the same boys who robbed them of Rs. 10,000/-. The said boys purportedly attempted to flee; however, the complainant and his brother raised an alarm and with the assistance of the public, apprehended them and handed them over to the police.

5. Consequently, on 05.08.2005, the FIR No. 688/2005, for offences under Sections 328, 379, 411, and 34 of the IPC was registered at Police Station Malviya Nagar, New Delhi ("subject FIR"), based on the statement of the complainant.

6. Pursuant to the registration of the FIR, the investigation ensued and culminated in filing of Chargesheet before the learned Metropolitan Magistrate. Subsequent thereto, on 14.02.2007, the cognizance for the offences under Sections 328,379,411 and 34 of the IPC, was taken against the appellant and the co-accused person.

7. Post committal of proceedings before the Sessions Court, on 10.01.2013, Charges were framed against the appellant for offences under Sections 328, 379 and 34 of the IPC, to which he pleaded not guilty and claimed trial. The Charge framed against the Appellant reads as under:-

> "*Firstly, that on 31.07.2005 at about 8.00pm, at TB Hospital bus stop, Aurobindo Marg, within the area of PS Malviya Nagar, Delhi you alongwith your associate*

namely, Vineet, S/o Krishan Dev (since declared PO) in furtherance of your common intention made Ram Kishore and his brother Shailender Kumar eat biscuits laced with intoxicating/stupefying substance with an intention to facilitate commission of theft of their belongings and thereby, you both committed an offence punishable under section 328 read with section 34 IPC and within my cognizance.

Secondly, that on the aforesaid date, time and place, you alongwith your associate namely, Vineet, S/o Krishan Dev (since declared PO) in furtherance of your common intention committed theft of the bag of Ram Kishore containing his clothes, clothes of his brother Shailender and also Rs.10,000/- in cash and thereby, you both committed an offence punishable under section 379 read with section 34 IPC and within my cognizance.

And I hereby direct that you be tried by this court for the aforesaid charge."

8. During the course of trial, the Prosecution examined four witnesses, PW-1, Shailender Kumar, the brother of the Complainant; PW-2, SI Jai Ram, the police official who had registered the subject FIR; PW-3, HC Vijender, who was present at the Police Post Saket when the Complainant and his brother had produced the accused persons. Apart from proving the *rukka*, he also arranged for the medical examination of the accused persons, witnessed the alleged recovery of money, and deposited the recovered amount with the MHC (M). PW-4, SI Rohtash Kumar, the main Investigating Officer, who conducted the investigation thereof.

9. Upon conclusion of the recording of prosecution evidence, the statement of accused/appellant, under Section 313 Cr.P.C., was recorded. The appellant, in his statement, denied all incriminating evidences put-forth

to him and stated that he had been falsely implicated and no evidence was led in his defence.

10. Upon considering the evidence led by the prosecution, the learned Additional Sessions Judge (ASJ) arrived at the conclusion that the prosecution had succeeded in establishing its case beyond reasonable doubt to the extent that the appellant had committed theft of ₹10,000/-, which was stated to have been kept in the complainant's bag. On the basis of the sequence of events and the testimonies of the witnesses, the learned ASJ held the appellant is guilty of the offence punishable under Section 379 read with Section 34 of the IPC. However, the appellant was acquitted of the charge under Section 328 of the IPC, on the ground of evidence in that regard being insufficient.

11. Consequent thereto, the appellant was sentenced to undergo rigorous imprisonment for a period of one year. Aggrieved thereby, the appellant has preferred the present appeal.

SUBMISSIONS OF BEHALF OF THE APPELLANT

12. The learned counsel for the appellant, while assailing the correctness of the Impugned Judgment and Order on Sentence, submitted that the learned Trial Court has erred to appreciate that none of the prosecution witnesses have supported the case in a consistent manner, and there exist material contradictions in their testimonies, thus, on this ground alone, the appellant is entitled to acquittal.

13. He further submitted that though the alleged incident occurred on 31.07.2005, the subject FIR was lodged with the Police only on 05.08.2005. The delay in registering the subject FIR, which remains unexplained by the

prosecution, casts a serious doubt on the veracity of the complaint and suggests that the appellant has been falsely implicated in the present case.

14. The learned counsel submitted that the complainant, who is the prime witness of the prosecution, was not examined during the trial and such omission is fatal to the prosecution's case. He further submitted that the testimony of PW-1 is not trustworthy and cannot be relied upon. Highlighting the contradictions in the statement of the PW-1, he submitted that while PW-1 deposed that the accused fled away with the bag containing clothes and money, he later contradicted himself by stating that after regaining consciousness, he and his brother found the bag at home and discovered that ₹10,000/- was missing from their bag. Thus, the conviction of the appellant which rests solely on the testimony of PW-1, which is inconsistent in nature and is self contradictory, is untenable. Furthermore, he also pointed out that no independent public witness accompanied the police at the time of the alleged recovery of money.

15. He submitted that in view of such glaring contradictions and inconsistencies in the evidence of prosecution witnesses, it is a fit case for acquittal of the appellant.

SUBMISSIONS ON BEHALF OF THE STATE

16. To the contrary, the learned APP, appearing for the State, seeking dismissal of the Appeal contended that the testimony of PW-1 is trustworthy and sufficient to establish the guilt of the appellant.

17. He submitted that the non-examination of the complainant as a witness is not fatal to the prosecution case, given that PW-1 has consistently supported the prosecution's case. The learned APP further submitted that the

principle of evidence is to be weighed and not merely counted. Moreso, the recovery of the cash from the possession of the appellant, along with corroboration by other official witnesses, conclusively establishes the prosecution's case. Accordingly, the appeal lacks merit and is liable to be dismissed.

ANALYSIS AND FINDINGS

18. Apart from hearing the detailed arguments on behalf of the appellant and the State, this Court has gone through the Trial Court record and the material placed before this Court.

19. The position of law is well settled that there is no bar to convict a person on the testimony of a solitary witness so long the witness is reliable and trustworthy. In this regard, it would be apposite to refer to the decision of the Apex Court in the case of ***Govindaraju alias Govinda Vs. State by Sriramapuram Police Station and Another*** (2012) 4 SCC 722, wherein it has been held as under:-

> ***"24.*** *It is a settled proposition of law of evidence that it is not the number of witnesses that matters but it is the substance. It is also not necessary to examine a large number of witnesses if the prosecution can bring home the guilt of the accused even with a limited number of witnesses. In Lallu Manjhi v. State of Jharkhand [(2003) 2 SCC 401 : 2003 SCC (Cri) 544] (SCC p. 405, para 10), this Court had classified the oral testimony of the witnesses into three categories:*
>
> *(a) wholly reliable;*
>
> *(b) wholly unreliable; and*
>
> *(c) neither wholly reliable nor wholly unreliable.*
>
> *In the third category of witnesses, the court has to be cautious and see if the statement of such witness is*

> *corroborated, either by the other witnesses or by other documentary or expert evidence.*
>
> ***25.*** *Equally well settled is the proposition of law that where there is a sole witness to the incident, his evidence has to be accepted with caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence otherwise recorded. The evidence of a sole witness should be cogent, reliable and must essentially fit into the chain of events that have been stated by the prosecution. When the prosecution relies upon the testimony of a sole eyewitness, then such evidence has to be wholly reliable and trustworthy. Presence of such witness at the occurrence should not be doubtful. If the evidence of the sole witness is in conflict with the other witnesses, it may not be safe to make such a statement as a foundation of the conviction of the accused. These are the few principles which the Court has stated consistently and with certainty."*

20. From the above decisions, it emerges that the prosecution case cannot be discarded as only one witness stood in witness box and others do not make themselves available to testify before the Court due to particular reasons. However, certain principles are to be followed while assessing the credibility of a solitary witness. Fundamentally, it is the quality and not quantity of the evidence that is relevant.

21. In the present case, the incident had occurred on 31.07.2005, however, no report was lodged with the police until 05.08.2005. The explanation advanced for the delay is that the complainant and his brother, instead of approaching the police, undertook to search for the accused persons themselves, and it was only on 05.08.2005, when they allegedly succeeded in locating and apprehending the accused, that they produced them before the police at the Check Post.

22. Pertinently, no reason for not going to the Police Station to get the subject FIR registered is given and instead, the Complainant and his brother were making search for unknown persons on their own for about five days. The manner adopted by the appellant is somewhat strange and does not appeal to reason. Due to the said major lapse on the part of PW-1 and the Complainant, their medical examination could not be conducted so as to establish the charge under Section 328 of the IPC. Moreover, the material evidence which could have been gathered on examination of their viscera was lost. Thus, there is no evidence to establish that the Complainant and PW-1 had eaten some biscuits that were allegedly laced with intoxicated substance. Also, in contradiction to the present version, PW-1 has deposed that he had not consumed the biscuit and did not fell unconscious. The learned Trial Court, thus, finding that the PW-1 had not proved its case beyond reasonable doubt pertaining to the allegations under Section 328 of the IPC, acquitted the appellant for the said offence.

23. The other material contradiction is that as per prosecution case the appellant and other co-accused had dropped PW-1 and the Complainant near Lodhi Garden in an unconscious state and took away, with them, a black colour bag of the Complainant and PW-1 containing Rs.10,000/- in the denomination of six notes of Rs.1,000 and eight notes of Rs.500/- along with a pair of pant and shirt of each of them. However, in striking contradiction to the above, PW-1 in his examination-in-chief stated that they were carrying two bags, which is a material improvement with the respect to number of bags which has increased to two. Furthermore, PW-1 in cross-examination deposed that after he and his brother regained consciousness

and came back to their rented room, and checked their bag, they found that the amount of Rs.10,000/- was missing from their bag. Therefore, the prosecution version becomes doubtful as it is not certain whether both the complaint and his brother were carrying one or two bags. In case, they had two bags, it is not clear from which bag the money was stolen. Additionally, it is further uncertain whether the appellant and other co-accused had stolen any money from the bags or took away the bag/bags with them. Moreso, it is also not clear whether PW-1 was unconscious or not when PW-1 and his brother were dropped near Lodhi Garden. These fundamental contradictions raise a doubt on the prosecution case.

24. The learned APP had relied upon recovery of Rs. 2,000/- from the possession of the appellant to connect him with the commission of the crime. However, no public witness was joined at the time of recovery proceedings. Also, the currency notes recovered from the possession of the accused persons were not produced before PW-1, during his evidence, to prove that these were the same notes which were stolen from their bag. There is no cogent evidence to establish that the recovered money belonged to the Complainant and his brother and in the circumstances the recovery is not free from doubt.

25. Significantly, the complainant has not appeared to testify. The status of PW-1 suffers from improbabilities and is not free from suspicion. Moreso, the non-corroboration by the complainant being a material witness, the sole testimony of PW-1 is lacking credence and reliability.

26. Considering the evidence placed on record, this Court finds that prosecution has not been able to demonstrate the guilt of the appellant

beyond doubt. The present Appeal is, accordingly, allowed and the appellant is acquitted upon giving benefit of doubt for the offence convicted under Section 379 read with Section 34 of the IPC.

27. The pending Applications, if any, stand disposed of.

(SHALINDER KAUR)
JUDGE

JUNE 12, 2025
r/kp