
(2008) 01 P&H CK 0114
In the Punjab And Haryana At Chandigarh

Bachhu Lal and Muna Prashad	Vs	APPELLANT
State of Haryana		RESPONDENT

Date of Decision : 21-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Penal Code, 1860 (IPC) — Section 328, 379, 411

Citation : (2008) 01 P&H CK 0114

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—By this judgment, two criminal appeals bearing Nos. 364-SB and 677-SB of 2007 shall be disposed of together as they arise from a judgment rendered by the Court of learned Sessions Judge, Ambala, in case FIR No. 28 dated 18.5.2006, under Sections 328, 379 IPC, registered at Police Station G.R.P. Kalka.

2. Appellant Bachhu Lal son of Sh. Jagan Nath, resident of village Sikria Khurd, Police Station Gadhwari, District Balia, U.P., has preferred Criminal Appeal No. 364-SB of 2007 and appellant Munna Parshad son of Sh. Bhaskit Bhagat, resident of village Naura, Police Station Meena Pur, District Muazaffarpur, Bihar, has preferred Criminal Appeal No. 677-SB of 2007.

3. Mr. Raman B. Garg, Advocate, in pursuance of order passed by this Court, has been nominated by the Registry as Amicus Curiae for the appellant Bachhu Lal. None has put in appearance for appellant Munna Parshad. Since Mr. Raman B. Garg has argued the case on finer details and has meticulously taken me through the evidence and has made best submissions, which the learned defence counsel can make, I cannot detain myself to secure presence of learned Counsel for appellant Munna Parshad. Therefore, accepting the arguments of Mr. Raman B. Garg, I proceeded to hear these appeals.

4. Both the appellants were sought to be tried in case FIR No. 28 dated 18.5.2006, under Sections 328, 379 IPC, registered at Police Station G.R.P. Kalka. Briefly stated, as per the FIR, that Shibbu son of Thakur Dass was doing a labour work at Pinjore. It seems that he is a migratory labourer from Uttar Pradesh. On 17.5.1996, he reached Railway Station, Chandigarh with his life long savings. At Platform No. 3 when he had to board "Sadbhawana Train" and sat in the said train keeping his luggage, which contained one old black & white small television make "Philips", a plastic bag (Thela) containing two pairs of pant kameez, one banian white coloured and one pair of socks. It is further stated that at about 4.00 or 4.30 P.M two persons aged between 50 to 52 years came near him and sat. One of them was having black complexion and was tall, whereas another was having small height. Both of them started talking with him and after some time tall man brought two frooties and they offered the same to him, which was lashed with some intoxicant, resultantly Shibbu became semi-conscious and was taken to hospital where he felt drowsiness. After regaining his consciousness he found that his luggage along with his purse containing Rs. 3,000/-has been stolen. The matter was investigated. Both the appellants were arrested and put to trial. Charge under Sections 328 and 411 IPC was framed against them, to which they pleaded not guilty and claimed trial.

5. PW. 1 Dr. Navjot Tiwana, Medical Officer of Government Hospital, Sector 6, Panchkula, stated that he has medicolegally examined Shibbu son of Thakur Dass and found him to be drowsy, not fully oriented to time, place and person.

6. PW. 2 is Head Constable Ajiwan Kumar. He stated that he handed over special report to the Superintendent of Police, Panchkula.

7. PW. 3 Sub Inspector Tilak Raj has stated that he recorded the formal FIR Ex. PC/1 and after completion of investigation he has prepared challan u/s 173 Cr.P.C.

8. PW. 4 Constable Niranjan Singh had also carried special report to be given to learned Illaqa Magistrate.

9. PW. 5 Satinder Kumar, Constable and PW.6 Constable Hukam Singh have tendered their affidavits in evidence to complete the link evidence.

10. PW. 7 Shibbu, complainant, has appeared in the Court and stated that he had identified the appellants who had administered him intoxicant in frooty. Regarding the recovered articles, he has not supported the prosecution and was declared hostile. But in cross- examination by the learned Public Prosecutor he again went along with prosecution. In cross-examination, both the appellants could not make any dent in his testimony.

11. PW. 8 Head Constable Seo Ram has also tendered his affidavit Ex. PP.

12. PW. 9 Head Constable Raj Kumar had partly investigated the case along with Assistant Sub Inspector Hakam Singh, PW.10, who had found the complainant Shibbu lying in semi-conscious condition at platform No. 3.

13. PW. 10 Sub Inspector Hakam Singh has also proved the recovery of articles from the appellants. Bachhu Lal accused suffered disclosure statement Ex.PL and accused Munna Parshad suffered disclosure statement Ex.PM. On the basis of disclosure statements, recovery had been effected. Thereafter, prosecution closed its evidence and had put all the incriminating evidence to both the accused, who stated that they have been falsely implicated. The appellants had opted not to lead any defence evidence.

14. Statement of PW.7 Shibbu inspires confidence as the same is corroborated by medical evidence and recovery had been made on the basis of disclosure statements suffered by the appellants.

15. Mr. Garg has stated that in the present case, no independent witness has been examined, which is fatal to the case of prosecution. It can be noticed that the commuters while getting a train at the railway station are in hurry and nobody is concerned to come forward for evidence. Furthermore since the railway station has commuters, no independent witness will be available for testimony and will not stay there.

16. Mr. Garg has further stated that no test was conducted to prove what kind of intoxicated substance has been administered to PW.7 Shibbu. The victim remained lying at platform No. 3 in semiconscious condition and from the said condition when he was taken to hospital he was feeling drowsiness. The kind of infrastructure which are available in the hospitals cannot carry the test requisite to determine the kind of intoxicated substance. Furthermore, Shibbu PW.7 has no enmity against the appellants to falsely implicate them in the present case. Having lost his life long savings, he will be the last person to substitute any accused.

17. Faced with these observations, Mr. Garg has urged that occurrence pertains to the year 2006 and the appellant Bachhu Lal has undergone one year and eight months. He has stated that in the impugned judgment while recording the sentence, the appellants gave their respective ages as 52 and 50 years, and also stated that they are not keeping good health and they have unmarried children and they have nobody to look after them. He has further stated that sentence of five years u/s 328 IPC is on the higher side. Their age and liabilities should be taken as mitigating circumstances to reduce their sentence. Accordingly, in agreement with the submissions made by Mr. Garg, I reduce the sentence of the appellants from five years to three years. However, I refrain myself from reducing the sentence of appellants u/s 411 IPC.

18. With these modifications, both the appeals are dismissed.

19. On a parting note, I appreciate the work and preparation of Mr. Garg. He shall be paid usual charges by Legal Service Authority, to which Amicus Curiae is entitled.