

**Ajay Kumar Tiwari Vs. State**

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**Court :** Delhi

**Decided On :** Feb-26-2014

**Judge :** S. P. Garg

**Appellant :** Ajay Kumar Tiwari

**Respondent :** State

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI RESERVED ON :

19. h FEBRUARY, 2014 DECIDED ON :

26. h FEBRUARY, 2014 + CRL.A. 1580/2011 AJAY KUMAR TIWARI Through :  
..... Appellant Mr.Arnayak Pathak, Advocate. versus STATE ..... Respondent  
Through : Mr.Lovkesh Sawhney, APP. CORAM: HON'BLE MR. JUSTICE  
S.P.GARG S.P.GARG, J.

1. Challenge in this appeal is to a judgment dated 28.11.2011 of learned Addl. Sessions Judge FTC (Central), Tis Hazari Courts, Delhi, in Sessions Case No.14/11 arising out of FIR No.282/10 PS NDRS by which the appellant Ajay Kumar Tiwari was held guilty for committing offence punishable under Section 328 IPC. By an order on sentence dated 29.11.2011, he was awarded RI for five years with fine ` 2,000/-.

2. The prosecution case as projected in the charge-sheet was that on 13.12.2010 at about 03.20 P.M. at main hall of New Delhi Railway Station, the appellant administered a stupefying substance to the complainant Pandav Dalai after mixing it in tea with an intention to commit or facilitate the commission of an offence of robbery. It was further alleged that the appellant robbed complainant Pandav Dalai and deprived him of cash ` 900/-, seven Riyal, passport, ATM card, I-card and mobile phone make Nokia. Some of these articles were recovered from his possession on 14.12.2010. During investigation, statements of the witnesses conversant with the facts were recorded. After completion of investigation, a charge-sheet was filed against the appellant for committing the offences under Sections 328/379/392/411 IPC. By an order dated 12.05.2011 the appellant was charged under Sections 328/394/411 IPC to which he pleaded not guilty and claimed trial. The prosecution examined five witnesses to establish the charges. In 313 statement, the appellant pleaded false implication and denied his complicity in the crime. The trial resulted in his conviction as aforesaid. It is relevant to note that the appellant was acquitted of the charges under Sections 394/411 IPC and the State did not challenge the said acquittal.

3. I have heard the learned counsel for the parties and have examined the file. On perusal of the statements of the prosecution witnesses, it reveals that the entire investigation is highly faulty and documents seem to have been manipulated to record conviction. The statements of the prosecution witnesses are full of inconsistencies. The occurrence took place at the railway station on 13.12.2010 at around 03.20 P.M. when the complainant Pandav Dalai was found in an unconscious state. The prosecution examined PW-4 (Satish Kumar), home guard who deposed that on 13.12.2010 at around 05.30 P.M. he found Pandav Dalai under the influence of intoxication; took him to Lady Hardinge Medical College and admitted him there. His statement was recorded on the next day by the Investigating Officer. In the cross-examination, he revealed that he was on duty at the railway station from 02.00 P.M. to 10.00 P.M. When he went to the spot, the complainant was lying near a main hall in front of the ticket counter at the railway station. He was not aware of his name and it was revealed to him on the next day by ASI Ashok Kumar. He alone took the victim in a TSR to the hospital and returned to his place of duty at 07.00 07.15 P.M. He had informed about the

incident to ASI Ashok Kumar at PS NDRS. The MLC (Ex.PW-5/A) does not record that the patient Pandav Dalai was brought by PW-4 (Satish Kumar) at the hospital. Rather it records the name of ASI Ashok Kumar who did not claim that the victim was taken and admitted by him at Lady Hardinge Medical College. It is strange that PW-4 (Satish Kumar) did not inform police while taking the victim to the hospital. He also did not inform any duty constable posted at the hospital regarding the incident. No DD entry was recorded in this regard at the police station. PW-4 (Satish Kumar) did not depose if at the hospital ASI Ashok Kumar had met him or he had informed him about the incident. It is unclear how the name of the patient, his father's name and place of residence found mention in MLC (Ex.PW5/A) when PW-4 was not aware about all these particulars and the patient was unconscious. There is an endorsement unfit for statement. It is, however, not clear as to when and at what time this endorsement was made and by whom. It is also not clear as to when the patient came to senses. The Investigating Officer did not keep tab on the patient. The prosecution did not examine the doctor who prepared the MLC (Ex.PW5/A). The Investigating Officer did not request the concerned doctor to preserve the stomach wash. The prosecution has not explained as to why the victim was not taken to hospital soon after he became unconscious at about 03.20 P.M. and was taken by a home guard at 06.15 P.M. only. He disclosed in his testimony that many police officials were present at the platform. Daily Diary (DD) No.18A dated 13.12.2010 seems to have been manipulated by ASI Ashok Kumar to cover his lapses in carrying out the investigation. He allegedly recorded this Daily Diary (DD) No.18A (Ex.PW-5/F) at around 08.00 P.M., where in the later part of the entry, it was mentioned that when he had gone to LHMC hospital in connection with the investigation of another case, Pandav Dalai s/o Madan Dalai was brought by PW-4 (Satish Kumar). The Investigating Officer has not offered explanation as to why he did not record the statement of the victim after he came to senses and why DD entry regarding the incident was not recorded at the police station separately. Only when the complainant went to the police station on the next day, the Investigating Officer recorded his statement and went to the platform where allegedly the accused was found present with stolen articles. PW-2 (Pandav Dalai) / the complainant and PW-5 (ASI Ashok Kumar) / the Investigating Officer have given entirely contradictory

and conflicting statements in this regard. PW-2 (Pandav Dalai) deposed that in the complaint (Ex.PW-2/A), he gave description of the accused to the police and identified him on the next day of incident in the police station when he was informed about his apprehension. He identified his articles in the police station and the same had already been recovered. In the cross-examination, he further elaborated that he regained consciousness in the hospital after 3 or 4 hours of consuming the tea. He was taken to the hospital by an official of the railway police. He went to the police after discharge from the hospital and identified the articles lying on the table there. He further disclosed that he had gone to the police station on his own from the hospital and had not been called by the police. PW-5 (ASI Ashok Kumar) stated that on 14.12.2010, when he went to the hospital for recording the statement, the victim was not found there. When he returned to the police station, the complainant met him at around 09.00 or 09.30 A.M. and his statement (Ex.PW-2/A) was recorded. He further disclosed that after lodging FIR he and the complainant went to the place of incident at around 01.00 P.M. When they were present near pavement near railway station parking towards Ajmeri gate side, the appellant was apprehended at the pointing of the complainant. On casual search of the appellant, the articles were recovered and were identified by the victim. The recoveries of the articles were not believed by the Trial Court. Apparently, Investigating Officer has not presented true facts. The appellant who had allegedly robbed the complainant after administering stupefying substance was not expected to remain present at a nearby spot with the robbed articles in his possession and also with the stupefying substance. The Investigating Officer admitted in the cross-examination that he did not make any application to the examining doctor to obtain or preserve the stomach wash of the complainant. He was unaware as to when the complainant regained consciousness. These circumstances show beyond doubt that the evidence was fabricated by the Investigating Officer. It is not clear if as per medical record in the hospital, the patient remained under treatment, and if so, till what duration. MLC (Ex.PW-5/A) does not record as to when the patient was discharged. It does not record that the complainant was hospitalized for any treatment. The Trial Court did not rely upon the testimonies of the prosecution witnesses and acquitted the complainant of the charge under Sections 394/411 IPC. When the appellant had no intention to

commit theft or was not found in possession of any robbed articles, there was no occasion for him to administer stupefying substance in a tea to the complainant. Again, there are vital improvements and deviations between the version given in statement (Ex.PW-2/A) and the deposition of the complainant in the Court. In the complaint (Ex.PW-2/A) it is recorded that the stupefying substance was mixed in a tea to the view of the complainant and the appellant insisted him to consume tea despite his reluctance. These facts do not find mention in the deposition of the complainant who did not depose if any poisonous substance was mixed in his presence by the appellant. The Investigating Officer did not make enquiry as to from where the complainant had procured the tea. The tea vendor on the platform was not examined. The cups in which tea was alleged used were not seized. The findings of the Trial Court basing its conviction under Section 328 IPC on the identification of the complainant cannot be sustained as it does not establish beyond reasonable doubt that it was the appellant who had administered poisonous substance to the complainant.

4. In the light of the above discussion, conviction and sentence recorded by the Trial Court under Section 328 IPC are set aside. The appeal is accepted. Higher Officers of the Investigating Officer shall take note of the lapses of the Investigating Officer in conducting the fair investigation of the case. The appellant shall be released forthwith if not required to be detained in any other case. Trial Court record be sent back immediately with the copy of the order. Copy of the order be sent to the Superintendent Jail for compliance. (S.P.GARG) JUDGE  
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