

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

**ON THE 5TH OF MARCH, 2024**

**CRIMINAL APPEAL No. 406 of 2000**

**BETWEEN:-**

**RAJENDRA PRASAD S/O SURAJ NARAYAN  
AGED ABOUT 35 YEARS, OCCUPATION: BUSINESS  
R/O PURE VARIYARSINGH KA PUKHA  
P.S. MUNSHIGANJ, DISTRICT SULTANPUR (U.P.)**

**.....APPELLANT**

**(SHRI AMAR SINGH RATHORE, ADVOCATE)**

**AND**

**THE STATE OF M.P.  
THROUGH STATION HOUSE OFFICER  
P.S. GRP  
DIST. RATLAM (MADHYA PRADESH)**

**.....RESPONDENT**

**(SHRI HEMANT SHARMA, GOVERNMENT ADVOCATE)**

***Reserved on : 28.02.2024***

***Pronounced on : 05.03.2024***

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*This appeal having been heard and reserved for judgement,  
coming on for pronouncement this day, Hon'ble Shri Prakash Chandra  
Gupta pronounced the following:*

## J U D G E M E N T

This appeal has been filed by the appellant/accused person u/S 374 of the Code Of Criminal Procedure, 1973, being aggrieved by the judgement of conviction and order of sentence dated 09.03.2000 passed by the Sessions Judge, Ratlam, in Sessions Trial No.98/1998, whereby learned Trial Court has convicted the appellant u/S 328 of IPC sentenced him to undergo Rigorous Imprisonment for 03 years with fine of Rs.1,000/- and in default of payment of fine to undergo additional R.I. for 02 months.

2. It is an admitted fact that the complainant Omprakash was known to the accused since the year 1983. The appellant used to live in Delhi where he worked in a cloth shop. Smt. Shakuntala is wife of the complainant Omprakash. On 06.03.1998, at around 09:13 PM, the appellant had gone to complainant's house and asked Shakuntala (PW/2) that had complainant Omprakash returned or not? Shakuntala (PW/2) called her neighbours and made the appellant stay in her house at night. On the next day, Shakuntala (PW/2) sent the appellant to Police station alongwith Gram Pradhan. On 11.03.1998, Alok Kumar Sharma (PW/5) was posted as SHO Police Station Gautam Buddha Nagar and he had arrested the appellant on the same day.

3. Prosecution story, in brief is that the complainant is resident of Noida City, Police Station Gautam Buddha Nagar, Uttar Pradesh. The appellant lived in Delhi and used to work in a cloth shop. On

04.03.1998, the complainant carrying Rs.70,000/- cash alongwith the appellant departed from Delhi to Surat by train. When the train had stopped at railway station, Ratlam, the appellant had offered him milk and banana. After consuming the same, the complainant swooned off. He got conscious after 02 days. Thereafter 02 constables helped him to get into a train going to Delhi. When he came back, he came to know that the appellant had already come. It is alleged that the appellant had made the complainant consume stupefying substance in milk and banana and took his luggage carrying Rs.70,000/- cash in it. Then on 11.03.1998, the complainant took the appellant to Police Station Sector 24, Noida alongwith his relative and gave a written complaint (Ex.P/1) on the basis of which report (Ex.P/2) was lodged and case diary was sent to GRP, Ratlam, where FIR (Ex.P/3) was lodged. After completion of investigation, charge-sheet was filed. The matter was committed to the Trial Court.

4. Learned Trial Court framed charges against the appellant u/S 328 of IPC. The appellant abjured his guilt and claimed to be tried. In turn, the prosecution examined witnesses namely, Omprakash (PW1), Shakuntala (PW/2), ASI H. L. Yadav (PW/3), SHO GRP Vinay Sharma (PW/4) and SHO Police Station Sector 24, Gautam Buddha Nagar, Noida Alok Kumar Sharma (PW-5) to prove its case. After completion of prosecution evidence, the accused person was examined u/S 313 of Cr.P.C. He had taken defence that he has not committed the offence and

has falsely been impleaded in the case due to old animosity. Though he has not examined any witness in his defence.

5. Learned counsel for the appellant/accused submits that the appellant has not committed the offence and has falsely been implicated in the case. It is further submitted that the impugned judgement is perverse and bad in law. Learned Trial Court has not properly appreciated the evidence available on record. The written complaint was filed 4-5 days belatedly, without any acceptable cause. There is no medical evidence in the case that the appellant got unconscious due to consumption of intoxicating/stupefying substance. No incriminating material was recovered from the possession of the appellant. The wife of the appellant stated that she had sent the appellant on 07.03.1998, while the complainant has mentioned in written complaint (Ex.P/1) that he took the appellant alongwith his neighbours at police station. Therefore, the prosecution has failed to prove the offence beyond reasonable doubt, but the Trial Court, without considering the aforementioned facts and circumstances of the case has wrongly convicted and sentenced the appellant therefore, it is prayed that the conviction and sentence of the appellant is liable to be set aside. Learned counsel has placed reliance on the case of *Krishna Kant V State (Delhi) [2023 (4) JCC 2983]* and *Mahinder Kumar & another V The State (Delhi) [2017 (3) JCC 1510]*.

6. On the other hand, learned Government Advocate for the respondent/State has opposed the prayer and supported the impugned

judgement.

7. I have heard learned counsel for the parties and perused the records.

8. In the case of ***Krishna Kant (Supra)***, the Delhi High Court in paragraphs 17, 18 & 20 has held as under:-

*"17. Further, in [Prashant Bharti v. State \(NCT of Delhi\)](#) (2013) 9 SCC 293, the Hon'ble Apex Court had quashed the charge under [Section 328](#) IPC observing that allegations levelled by the prosecutrix of having been administered some intoxicant in a cold drink could not be established by the cogent evidence. The relevant observations read as under:*

*"23.9. Ninthly, as per the medical report recorded by the AIIMS dated 16.2.2007, the examination of the complainant did not evidence her having been poisoned. The instant allegation made by the complainant cannot now be established because even in the medical report dated 16.2.2007 it was observed that blood samples could not be sent for examination because of the intervening delay. For the same reason even the allegations levelled by the accused of having been administered some intoxicant in a cold drink (Pepsi) cannot now be established by cogent evidence." (Emphasis supplied)*

18. A co-ordinate Bench of this Court in [Mahinder Kumar v. State](#) 2017 SCC OnLine Del 8327, in an appeal, had expressed that it was difficult to uphold the conviction under [Section 328](#) IPC merely on the basis of oral evidence. The relevant portion of the decision is extracted as under:

"20. In view of the aforesaid discussion, scrutiny of testimonies of prosecution as well as defence witnesses and the MLC of the victim, it is clear that the findings rendered by the learned Trial Court are based only on the testimony of injured witness. But in the absence of any medical evidence corroborating the allegation of the injured, convicting the appellants for the offence under [Section 328](#) of IPC does not seem to be justified in the facts of the present case, especially when the prosecution has not seized any liquid/substance for taking expert opinion so as to know the substance was poisonous, stupefying, intoxicating or unwholesome drug. Prosecution has also not produced any witness to rebut the plea of alibi on behalf of the appellants except that of the injured witness. However, the appellants have produced two witnesses in their defence and merely because they did not prove the presence of the appellants at the spot, therefore, they were declared hostile.

21. In the considered opinion of this court, depositions of witnesses, whether they are examined on the prosecution side or defence side or as court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias. No witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a court witness. It is judicial scrutiny which is warranted in respect of the depositions of all witnesses for which different yardsticks cannot be prescribed as for those different categories of witnesses.

22. This Court is of the considered opinion that in a case under [Section 328](#) IPC mere oral assertions are

*not sufficient to hold an accused guilty of the offence. To hold an accused guilty for the offence, the oral assertions ought to be corroborated by other circumstances and evidence." (Emphasis supplied)*

20. In [Santosh Kumar v. State](#) 2008 (4) JCC 2919 also, this Court while stressing upon the importance and relevancy of medical evidence to establish guilt under [Section 328](#) IPC, had held as under:

*"...From the above quoted observations of the learned trial Judge it is very much clear that the findings rendered are not sustainable at all because of being conjectural. Simply on the basis of the statement of PW-5 alone it could not be concluded that he had become unconscious because of eating the biscuit or drinking tea offered to him by the accused. There had to be medical evidence to the effect that PW-5 had, in fact, become unconscious because of consuming any drug or intoxicating substance etc. mixed in tea or biscuit..." (Emphasis supplied)"*

9. In the case of ***Mahinder Kumar (Supra)***, the Delhi High Court in paragraph 19 has held as under:-

*"19. It would be relevant to mention here the dictum of Hon'ble Supreme Court in [Joseph Kurian Phillip Jose vs. State of Kerala](#), AIR 1995 SC 4, in which the court observed as under:-*

*"In order to prove offence under [Section 328](#) the prosecution is required to prove that the substance in question was a poison, or any stupefying, intoxicating or unwholesome drug, etc., that the accused administered the substance to the complainant or*

*caused the complainant to take such substance, that he did so with intent to cause hurt or knowing it to be likely that he would thereby cause hurt, or with the intention to commit or facilitate the commission of an offence. It is, therefore, essential for the prosecution to prove that the accused was directly responsible for administering poison etc. or causing it to be taken by any person, through another. In other words, the accused may accomplish the act by himself or by means of another. In either situation direct, reliable and cogent evidence is necessary."*

10. In the instant case, Omprakash (PW/1) stated that on 04.03.1998, he was going to Surat to purchase clothes alongwith the appellant in S3 coach seat No.62 & 63 of Surat Temple Mail. He also stated that he was carrying a suitcase having Rs.70,000/- cash. When the train stopped at Ratlam Station, the appellant brought milk and bananas and both of them consumed it. The appellant then went for nature's call. This witness also started to go towards toilet for nature's call, but he got unconscious. On the next day at around 11:00 AM – 12:00 PM, he got conscious and found himself in a local train which was stationed. Two police constables were present near him. He narrated the incident to both the police constables and the complainant could not find his suitcase and appellant there. He further stated that a constable took him to Surat by train and he had made him stay at Surat Station in front of station master's room throughout the day. On 08.03.1993, he returned to Delhi by train as he had the return ticket of the same day. On the next day of his arrival, the complainant reported the matter by written complaint.



Smt. Shakuntala (PW/2) has supported the statement of her husband and further stated that the appellant returned to her home alone at around 09:30 PM on 06.03.1998 and he told her that he got separated from the appellant at Ratlam Station. On the next day, she took the appellant to police station alongwith Gram Pradhan. On 08.03.1998 at around 10:00–11:00 PM, the complainant had returned home and he was not well, so he was treated by Dr. Rana. After 02 days, she took the complainant to Dr. Bhatole for treatment. On 09.03.1998, the complainant had told her about the incident and on 11.03.1998, her husband had reported the matter.

**11.** SHO Alok Kumar Sharma stated that on 11.03.1998, he lodged an report (Ex.P/2) on the basis of written complaint (Ex.P/1) filed by the complainant. He also stated that he arrested the appellant on the same day. SI Vinay Sharma stated that he lodged an FIR (Ex.P/3) on the basis of written complaint (Ex.P/1) and report (Ex.P/2) produced by constable Krishna Kumar Awasthi Police Station Gautam Buddha Nagar, Noida. ASI H. L. Yadav stated that on 16.04.1998, he recorded statement of Shakuntala (PW/2) u/S 161 of Cr.P.C.

**12.** On considering the statement of the complainant, it appears that after gaining consciousness, he found himself before two constables and one constable took him to railway station Surat. The complainant stayed at railway station Surat but has not lodged any report about the incident at GRP, Surat. He has also not reported the matter at GRP, Ratlam. The

complainant had reached home on 08.03.1998 as stated by his wife Shakuntala. The matter was reported by the complainant after 03 days on 11.03.1998. Shakuntala (PW/2) in paragraph-7 of her cross-examination stated that from 08.03.1998 – 11.03.1998, the doctors had treated the complainant, she has the receipts of the medical prescription but it appears that no prescription and medical documents relating to the treatment of the complainant has been recovered by the police.

**13.** It also appears from the statement of witnesses and investigating officers that no attempt was made to recover stolen suitcase containing Rs.70,000/- cash of the complainant. There is no medical evidence in the case that the complainant got unconscious due to consumption of intoxicating/stupefying substance. Therefore, only on the basis of ocular statement of the complainant, it cannot be assumed that he got unconscious due to consumption of intoxicating/stupefying substance. Therefore, only ocular statement of the complainant and his wife is not sufficient to convict the appellant, but the Trial Court, without considering the aforementioned facts and circumstances of the case, has wrongly convicted and sentenced the appellant in the alleged offence. The prosecution has miserably failed to prove the case against the appellant beyond reasonable doubt. Therefore, the impugned judgement of conviction and order of sentence is not sustainable.

**14.** In view of the foregoing discussion, the present appeal is **allowed**. The conviction and sentence passed by learned Trial Court vide

impugned judgement against the appellant is set aside. The appellant is acquitted from the charge u/S 328 of IPC. The appellant is in custody since 12.01.2024, he be set free, if not required in any other case.

15. Copy of this judgement alongwith records of the Trial Court be immediately sent back to the Trial Court for intimation and necessary compliance.

16. Accordingly, present appeal stands disposed of.

Certified copy, as per Rules.

**(PRAKASH CHANDRA GUPTA)**  
**JUDGE**

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