

Harish Chandra

Vs

State of U. P.

Criminal Appeal No. 248 of 1971

(R.S. Sarkaria, P.N. Shinghal JJ)

23.03.1976

JUDGMENT

SHINGHAL, J. -

1. Appellant Harish Chandra and his coaccused Ram Autar were convicted by the First Temporary Sessions Judge, Pilibhit, of an offence under Section 392, I.P.C. and were sentenced to rigorous imprisonment for four years. The High Court upheld their conviction, but reduced the sentence of Ram Autar to two years and of Harish Chandra to one year. Against that judgment of the High Court dated April 30, 1971, Harish Chandra has preferred the present appeal. No appeal has been filed by the other accused Ram Autar.

2. It was alleged that Avinash Kumar (PW 1) boarded a train at Chakarapur railway station on April 8, 1968, at about 7 or 7.30 p.m. to go to Purnagiri in Pilibhit district. Appellant Harish Chandra and his coaccused, along with some other persons, entered the same compartment after Avinash Kumar (PW 1). When the train reached railway station Tanakpur at about 9 or 9.30 p.m., some of the travellers started getting down from the compartment and there was a great rush. It was alleged that, at that time, accused Ram Autar forcibly took away the wristwatch of Avinash Kumar (PW 1) and when he (Avinash Kumar) raised an alarm, appellant Harish Chandra slapped him and his other companion hit him with a stick. Harish Chandra and his companions then jumped out of the compartment, followed by Avinash Kumar (PW 1), who found a constable at the platform and informed him of the incident. A search was made for the appellant and his companions at the platform and, ultimately, both Harish Chandra and Ram Autar were found near a teastall, at a short distance from the railway station. Avinash Kumar (PW 1) identified Harish Chandra and Ram Autar as the persons who had robbed him of the wristwatch, and the constable caught hold of them. On being questioned, appellant Harish Chandra is said to have taken Avinash Kumar and the constables to a heap of ash lying behind the teastall and to have taken out the stolen wristwatch from it. The watch was seized under memorandum Ex. Ka-1. A report was drawn up and the matter taken to police station Pilibhit where appellant Harish Chandra and Ram Autar were handed over to the police for further action. They were both challenged for the commission of an offence under Section 394, I.P.C., along with three other accused. The trial Court convicted and sentenced the appellant and Ram Autar as stated above, but acquitted the remaining accused.

3. It has been argued by Mr. Frank Anthony on behalf of the appellant that the High Court committed a serious error of law in placing reliance on the statement said to have been made by the appellant Harish Chandra that he would tell the police where he had put the watch, because it was in the nature of a confession made by the accused person under an inducement proceeding from Ram Murti Singh (PW 6) who was the Head Rakshak of the Railway Protection Force. It has been urged

that such a confession fell within the purview of Section 24 of the Evidence Act and could not be admissible even under Section 27 of that Act as it is not an exception to Section. 24. Reference in this connection has been made to Ramkishan Mithanlal Sharma v. State of Bombay (AIR 1955 SC 104 : 1955 SCR 903 : 1955 Cri LJ 196); Delhi Administration v. Balakrishan (AIR 1972 SC 3 : 1972 Cri LJ 1); Emperor v. Taduturu Poligadu (AIR 1940 Mad 12 : 41 Cri LJ 242) and Halsbury's Laws of England, third edition, paragraph 860-862. Our attention has been invited to the statements of Ram Murti Singh (PW 6) and Avinash Kumar (PW 1) to show that Ram Murti Singh had told the appellant and Ram Autar that he would release them if they gave the watch and that induced the appellant to say that he would let him know where the watch had been put. Mr. Rana has argued, on the other hand, that the appellant did not say anything to Ram Murti Singh (PW 6) which could be said to amount to a confession within the meaning of Section 24 of the Evidence Act, and that even if what the appellant said was left out of consideration altogether, that would not affect the correctness of his conviction because the parol evidence on the record and the fact that the appellant recovered the watch from the ash heap behind the teastall, were quite sufficient to justify his conviction.

4. It appears there is justification for this argument of Mr. Rana because even if the alleged confessional statement of the appellant is left out of consideration, the other evidence on the record is sufficient to justify his conviction. Appellant Harish Chandra was admittedly a resident of Bareilly, and the evidence on record leaves no room for doubt that he boarded the same compartment in which Avinash Kumar (PW 1) had entered, at Chakarpur. There is also the evidence of Avinash Kumar (PW 1) that, as the train reached Tanakpur railway station and the passengers started to get down, he was relieved of his watch by accused Ram Autar and that when he raised an alarm appellant Harish Chandra gave him a slap and ran away. It is also established by the evidence on record that Avinash Kumar and the Head Rakshak of the Railway Protection Force (PW 6), along with some policemen, made a search and found Harish Chandra and Ram Autar taking tea at a teastall and ultimately appellant Harish Chandra took out the watch from a heap of ash behind the teastall and gave it to the Head Rakshak of the Railway Protection Force. No effective criticism has been levelled against all this evidence of the prosecution, and even appellant Harish Chandra has not found it possible to give any reason why Avinash Kumar (PW 4) should have deposed against him falsely when they were not even known to each other. It would not therefore affect the merits of the case even if the so-called confessional statement of the appellant is left out of consideration altogether.

5. It has next been argued by Mr. Anthony that the recovery of watch had not bearing on the guilt of Harish Chandra because it might also be that he merely knew that his friend Ram Autar had hidden the watch in the heap of ash and he simply took it out and made it over to the police without being a party to the theft. This argument is quite futile because the other satisfactory evidence on the record and the sequence of events are sufficient to prove the participation of appellant Harish Chandra in the crime. We have made a reference to the statement of Avinash Kumar (PW 1) in this connection which the High Court has held to be independent and reliable.

6. Then it has been argued by Mr. Anthony that as appellant Harish Chandra slapped Avinash Kumar (PW 1) after the watch had been stolen by Ram Autar, it could not be said that hurt was caused to Avinash Kumar in order to commit the theft, or in committing the theft, so as to bring the offence within the purview of Section 390, I.P.C. This argument is also unconvincing because, according to Section 390, I.P.C., 'theft' is robbery if in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, evidence in the present case was quite sufficient to show that after Avinash Kumar had been relieved

of his watch by accused Ram Autar, he (Avinash Kumar) raised an alarm and appellant Harish Chandra slapped him at that time. This shows that as the train was about to stop at Tanakpur railway station and accused Ram Autar was trying to carry away the stolen watch, appellant Harish Chandra slapped Avinash Kumar in order to enable him to do so. The hurt which was thus caused to Avinash Kumar clearly fell within the purview of Section 390, I.P.C. and we find no justification for the argument that it had no relation to or bearing on the theft which had been committed by accused Ram Autar.

7. It has lastly been argued that the appellant is entitled to acquittal because Ram Murti Singh (PW 6) did not have the authority to investigate the case as he was Head Rakshak of the Railway Protection Force. This argument is also of no avail for the simple reason that there is nothing on the record to show that the Head Rakshak at all investigated the case.

8. The sentence awarded to the appellant cannot also be said to be excessive, and as we find no merit in this appeal, it is dismissed. Appellant Harish Chandra is on bail and shall surrender to serve out the remaining sentence.

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