

Harish Chandra vs State Of U.P. on 23 March, 1976

Equivalent citations: AIR1976SC1430, 1976CRILJ1168, (1976)2SCC795, 1976(8)UJ371(SC), AIR 1976 SUPREME COURT 1430, (1976) 2 SCC 795, 1976 SCC(CRI) 300, 1976 CRI APP R (SC) 174, 1976 UJ (SC) 371, ILR 1976 KANT 1330

Bench: P.N. Shinghal, R.S. Sarkaria

JUDGMENT

R.S. Shinghal, J.

1. Appellant Harish Chandra and his co-accused Ram Autar were convicted by the First Temporary Session Judge, Pilibhit, of an offence under Section 392 I.P.C. 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 (P.W. 1) boarded a train at Chakarpur 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 co-accused, along with some other persons, entered the same Compartment after Avinash Kumar (P.W. 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 wrist watch of Avinash Kumar (P.W. 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 (P.W. 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 end, ultimately, both Harish Chandra, and Ram Autar were found near a tea stall, at a short distance from the railway station. Avinash Kumar (P.W. 1) identified Harish Chandra and Ram Autar as the persons who had robbed him of the wrist watch, and the constables caught hold of them. On being taken questioned, appellant Harish Chandra is said to have taken Avinash Kumar and the constables to a heap of ash lying behind the tea stall and to have taken out the stolen wrist watch 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 IPC along with three other accused. The trial Court convicted and sentenced the appellant ands 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 (P.W. 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 v. State of Bombay (1) Delhi Administration v. Balkrishan Emperor v. Taduturu (2) Poligndu and Halsbury's Laws of England, third edition, paragraphs 868.862. Our attention has been invited to the statements of Ram Murti Singh (P.W. 6) 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. Bana has argued, on the other hand, that the appellant did not say anything to Ram Murti Singh (P.W. 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 could not effect 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 tea stall, were quite sufficient to justify his conviction.

4. It appears that 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 (P.W. 1) had entered, at Chakarpur. There is also the evidence of Avinash Kumar (P.W. 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 (P.W. 6), along with some police men, made a search and found Harish Chandra and Ram Autar taking tea at a tea stall and ultimately appellant Harish Chandra took out the watch from a heap of ash behind the tea stall and gave it to the Head Rakshak of the Railway Protection Force. No effective criticism has been leveled against all this evidence of the Prosecution and even appellant Harish Chandra has not found it possible to give any reason why Avinash Kumar (P.W. 1) should have deposed against him falsely when they were not even know 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 no bearing on the guilt of Harish Chandra because it might also be that he merely knew that his friend Ram Autar had bidden the watch in the heap of ash and he simply took it out and nude it over to the police without being a party to the theft. This argument is quite frile 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 IPC. This argument is also unconvincing because, according to Section 390 IPC, '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, the offender, for that and, voluntarily causes or attempts to cause hurt. The evidence in the present case was quite sufficient to show that after Avinash Kumar had been relieved of his watch by accused Ram Antar, 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.