

Chandmal Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Sep-13-1983

Reported in : 1983WLN(UC)287

Judge : K.S. Lodha, J.

Appeal No. : S.B. Criminal Revision No. 294/79 and 2 Ors.

Appellant : Chandmal

Respondent : The State of Rajasthan

Judgement :

K.S. Lodha, J.

1. All three revisions arise out of the same case and, therefore, they are being disposed of by a common order.

2. The facts giving rise to these three revisions briefly stated are that a theft had taken place in the temple of Ambaji situated in Pratapgarh. In the night between 17th and 18th of January, 1975. This was discovered by Pujari Ram Chandra on the Morning of 18-1-75 when he went in the temple and found that the western door of the temple was lying open and some clothes etc. were lying scattered. He thereupon informed Shri Shambhu Nath, who is the manager of the temple. Thereafter a report was lodged by Ram Chandra at P.S Pratapgarh on 18-1-78 vide

Ex. P. 2. The list of the stolen properties was also submitted separately on the same day. The police registered a case Under Sections 457 and 380 IPC and started investigation. Accused Mangi Lal was arrested on 30-5-78. While in police custody, Mangilal gave information vide Ex. P. 16A on 3-5-75 to the effect that out of the stolen property from the temple of Mataji, he had sold some articles including stolen articles, namely, mukut bangles, kundal and other small articles to Chandanmal Sunar of village Javra. On 10-6-75, Mangilal further gave information to the effect that the money received by him from Chandmal on account of the sale of the aforesaid articles had been deposited by him in a post office. This Information was recorded vide Ex. P 16 in the meantime, Chandmal had also been interrogated by the Police and Chandmal produced nine saris and some pieces of cloth, gota kinari etc. before the police on 31-1-75 vide Ex. P. 7. Later while in custody, the accused Chandmal on 1-6-75, gave information to the police voluntarily that he had melted the ornaments purchased by him from Mangi Lal and had turned them into the ingot and had sold the same through Shantilal Dalal at Ratlam and he was prepared to get the same recovered. This information was recorded vide Ex. P. 17. In pursuance of this information, Chandmal was taken to Ratlam where he identified Satya Narain as person to whom the ingot had been sold and at his instance, Satya Narain produced the ingot, which was taken possession of by the police vide Ex. P. 10. After completing the investigations, the police put up a challan for offence Under Section 380 and 487 IPC against Mangilal, Chandmal and one Kalicharan to whom also Mangilal is alleged to have disposed of some of the stolen articles. The learned Magistrate framed charges Under Section 457 and 383 IPC against the accused Mangilal and Under Section 411 and 414 against Chandmal and Under Section 411 against Kalicharan, At the conclusion of the trial, the learned Munsif and Jd. Magistrate, Pratapgarh, by his judgment dated 30-5-77, convicted Mangilal Under Section 380 IPC, read with Section 75 IPC for which later a charge had been framed against him and the accused Chandmal Under Section 414 IPC. He however, acquitted Kalicharan of the offence Under Section 411 IPC Mangilal was sentenced to three years' rigorous imprisonment and a fine of Rs. 3,000/- whereas Chandmal was sentenced to two years' r.i. and a fine of Rs. 1,000/- and in default of payment of fine to four months' further r.i. By the same order, he also directed that the stolen saris and

the ingot of gold weighing 44 gms. and 650 miligrams to be given to the manager of the temple of Ambaji from where they had been stolen. He also passed necessary orders in respect of the other article with which we are at present not concerned. Aggrieved of this, Chandmal and Mangilal accused filed separate appeals. Satya Narain who had produced the in got also filed an appeal. The accused persons challenged their convictions and sentences whereas Satya Narain challenged the order of the learned Magistrate regarding the delivery of the ingot to the temple. The learned Sessions Judge, Pratapgarh, dismissed the appeal of Mangilal. He partly accepted the appeal of Chandmal and instead of his conviction Under Section 414 convicted him only Under Section 411 IPC and sentenced him to one year's r.i. and a fine of Rs. 1,000/-. On Satya Narain's appeal the learned Judge directed that as there appeared to be a dispute about the title to the ingot, the same should be temporarily confiscated to the State and the parties claiming title may get the same declared by a competent civil court. Now aggrieved of this order, three revisions have been filed. Revision No. 179 has been filed by Chandmal challenging his conviction and sentence whereas revisions no. 228 and 294 have been filed respectively by Satya Narain and Sambhu Nath, the manager of the temple claiming possession of the ingot and challenging the order of the learned Sessions Judge for temporary confiscation of the same and directing the title to be decided by a Civil Court,

3. I have heard the learned counsel for the petitioners in all the three cases and the learned Public Prosecutor and have also gone through the record.

4. So far as the revision filed by Chandmal is concerned, the learned Counsel Shri Soni has first tried to assail the conviction and sentence passed against him but after some arguments, he gave up his contention in respect of the conviction but confined himself to the question of sentence only. Having regard to all the circumstances of The case and the fact that the accused Chandmal has already undergone about one and half months of the imprisonment, that the occurrence is as old as 18-1-75, that the stolen property has already been recovered in bulk. I am of the view that no useful purpose will be served by sending the accused Chand Mal back to jail on this distance to time after the incident and in lieu of the remaining part of the substantive sentence awarded to him, a suitable amount of

fine may be imposed,

5. I, therefore, partly allow the revision filed by Chandmal and reduce the sentence of one year's imprisonment imposed Under Section 411 IPC to the term already undergone by him and in lieu of the remainder of the term, a fine of Rs. 2,500/- is imposed, over and above the amount of Rs. 1000/- already awarded by the learned Sessions Judge. Thus, the total fine would come to Rs. 3,500/-. The petitioner Chandmal is granted three months' time to pay up the fine. Failing which, he will undergo four months' r.i.

6. Now coming to the revisions of Satya Narain and Sambhu Nath, it may be stated that the learned Counsel for Satya Narain has urged that in the first place, the ingot, which has been got produced from Satya Narain has not been connected with the theft and in these circumstances, the ingot should be returned to him. He also pointed out that the learned courts below have based the conviction of Chandmal on the recovery of the saris and not the recovery of this ingot. He also pointed out that in the information said to have been given by Chandmal, he had not named Satya Narain but had only stated that he had sold the ingot through Shantilal Dalal. At the time of recovery, Shantilal Dalai was not there nor has he been examined as a witness. He also urged that as a matter of fact the particulars of the stolen property had not been mentioned in the FIR and in these circumstances, it was doubtful whether the ingot was prepared by melting the articles said to have been stolen from the temple. In support of his contention, he placed reliance upon *Lalluram v. State* AIR 1967 Gujarat 68, and *S. Natrajan v. State of Mysore* 1979 Cr. LR (SC) 173. On the other hand the learned Counsel for the other petitioner Shambu Nath has urged that though the conviction of Chandmal may not be based on the alleged recovery of the ingot and the courts below have not found the ingot to be connected with the alleged theft, the statement of Chandmal and the information given by him to the Police vide Ex P 17 make it abundantly clear this ingot was prepared out of the article sold to Chandmal by Mangilal and Mangilal in his information to the police had clearly admitted that he had stolen the ornaments etc from the temple and had sold them to Chandmal. He further pointed out that although in the information Ex P 17, Chandmal had not named Satya Narain, he had immediately identified him when

the police took him to Ratlam and stated that Satya Narain was the person to whom he had sold the ingot and it was in pursuance of this that Satya Narain produced the ingot. In these circumstances, the temple whose ornaments had been stolen is clearly entitled to the delivery of ingot. In support of his contention that the statements of Chandmal and Mangilal to the police are admissible in evidence so far as the delivery of the alleged stolen property is concerned, he placed reliance upon *Mst. Bhuri v. Bhanwarlal* 196S(2) Cri. L J. 702 and *Dhanraj Boldeokishan v. State* 1965(2) Cr. L J 805. I have given my careful consideration to the rival contentions. So far as the case of Satya Narain is concerned, I am clearly of the opinion that in the circumstances of the case, he cannot be said to be the person entitled to the possession of the ingot. There is no room for doubt that he had purchased this ingot from Chandmal and Chandmal has clearly admitted in his information that he had prepared this ingot from the articles purchased by him from the accused Mangilal who stands convicted for the theft from the temple. Satya Narain has appeared as a witness for the prosecution and his statement before the court also indirectly supports the case of the temple in as much as he has stated that when the police came along with Chandmal, he was in the market. The police people asked him to produce the gold, which he had purchased from Chandmal. Chandmal was present at that time but he did not say anything. He, of course, adds that he denied having purchased any gold from Chandmal but he makes out a story that at the insistence of the police, he took the necklace of his wife, got it melted and delivered the ingot to the police. Now this story on the face of it, appeared to be wholly unbelievable. He admits that the only threat given to him by the police, that if he did not deliver the gold, he would be arrested. He also admitted that police did not beat him or otherwise compelled him. He also states that the threat given to him was in a low tone. He also states that this talk took place at the shop of Jeetmal where Jeetmal, Madanlal etc were present. He left the police and Chandmal etc. at that place and went to his house, took the necklace of his wife, got it melted and turned into an ingot and then brought it to the police. Now in fact if he had been threatened by the police as stated by him, he had ample opportunity and time to make a complaint against the police but he did not do anything of the type and appears to have timidly got the necklace of his wife and got it turned into an ingot and handed it to the police. Not

only this, even after handing over the ingot to the police, he did not move his small finger against the police even till the disposal of the case and came to the witness box in order to support the theory of the recovery of course, he has given a little turn and twist to the theory but all the same, he does state that Chandmal had come along with the police and thereafter, the ingot was not recovered from him. In these circumstances, the ingot produced by Satya Narain does not appear to be belonging to him nor does he deserve the return of the same. The authorities relied upon by the learned Counsel for Satya Narain in the circumstances pointed out above, do not help him. There is no question with the principle that ordinarily when an article alleged to be stolen is not proved to be stolen is to be returned to the person from whose possession, it has been taken but this rule is only of general application i.e. in the normal circumstances but where the article is produced by a person in the circumstances which clearly denote that he was not the owner thereof nor was in lawful possession thereof, he cannot claim the return of that article.

7. When Satyanarain as stated above is not entitled to get this ingot the question which immediately arises for consideration is whether the temple is entitled to get it. It may be mentioned here that neither the accused Mangilal nor the accused Chandmal have claimed this ingot. On the other hand, there are statements of the accused Mangilal as well as Chandmal, which have already been referred above, from which it clearly appears that the ingot is a product from the melting of the ornaments stolen from the temple. At the cost of repetition, I may mention that in both the informations Ex. 16 and 16A, Mangilal has stated that these articles pertained to the theft from the temple and in Ex. P 17, Chandmal had clearly stated that he has purchased the ornaments from Mangilal and had turned them into the ingot by melting the same. It would not be out of place to mention here that so far as the conviction of the accused is concerned, it can be based only on clear and convincing evidence by which the offence is brought home to the accused without any reasonable doubt but so far as the return of the property is concerned, the evidence need not be weighed with that meticulous precision and we have only to see as to who is the person best entitled to get property in the circumstances of the case. The Statements of the accused themselves or the information supplied by them Under Section 27 of the Evidence Act are clearly

admissible so far as the disposal of the property is concerned. I am supported in this view by an authority of this Court itself in Mst. Bhuti's case (supra) and M/s. Dhan Raj Baldeo Kishan's case (supra), In this view of the matter, I am clearly of the opinion that the temple is entitled to get this in got The learned Addl. Sessions Judge was wrong in temporarily keeping it in the custody of the court and directing Satya Narain and the temple to establish their title to it.

8. The result, therefore, is that Satya Narain's revision is rejected but the revision of Shambhu Nath on behalf of the temple is allowed and it is directed that the ingot produced by Satya Narain vide Ex. P 10 should be returned to the temple of Shri Ambaji through its manager Shri Shambhu Nath. Chandmal's revision is partly allowed as indicated above.

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