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Hazari Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jan-08-1991

Reported in : 1991(1)WLN221

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Jail Appeal No. 188 of 1990

Appellant : Hazari

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated May 29, 1990, passed by the Additional Sessions Judge, Chittorgarh, by which the learned Additional Sessions Judge acquitted the accused-appellant Hazari under Sections 397 and 307, I.P.C. but convicted him under Sections 326, 325, 324, 323 and 342, I.P.C.

2. The incident, which led to the prosecution of the applleant Hazari took-place in the intervening night between January 8/9, 1989. The report of the incident was lodged by Pratap Singh at the Police Station, Akola (district Chittorgarh) that he and Hazari used to reside together in the house of Kanhaiya Lal Mahajan.

Yesterday, he received Rs. 3637/-, out of which he made payment of Rs. 1230/- and the remaining amount was lying with him. Out of the remaining amount, Hazari took-away Rs. 2000/- from his pocket and, also, inflicted injury with an axe and Dhariya on his person. On the basis of this information, the case under Sections 323, 324, 342 and 379, I.P.C. was registered and the police, after necessary investigation, presented the challan against the accused-appellant under Sections 323 and 342, I.P.C. in the Court of the Additional Munsif and Judicial Magistrate, Kapasan, who committed the case to the Court of the Sessions Judge, Chittorgarh. The learned Additional Sessions Judge, on June 21, 1989, framed a charge under Section 307, I.P.C. against the accused-appellant, but the learned trial Court, during trial, mentioned in the Judgment that actually the appellant was charged for the offences under Section 397 and not under Section 307, I.P.C. The learned Additional Sessions Judge, therefrom, treating the charge under Section 397, I.P.C, after trial, acquitted the appellant under Section 397 as well as under Section 307, I.P.C, but convicted the appellant under Sections 326, 325, 324, 323 and 342, I.P.C. The learned Additional Sessions Judge sentenced the appellant under Section 326, I.P.C. for the three years' rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine to further undergo three months rigorous imprisonment; Under Section 325, I.P.C. the appellant was sentenced for two years' rigorous imprisonment and a fine of the Rs. 300/- and in defaulf of payment of fine to further undergo two months' rigorous imprisonment; under Section 324, I.P.C, the appellant was sentenced for six months rigorous imprisonment and a fine of Rs. 200/- and in default of payment of fine to further undergo one month's rigorous imprisonment; under Section 323, I.P.C, the appellant was sentenced to undergo three months' rigorous imprisonment and a fine of Rs. 100/- and in default of payment of fine to further undergo 15 days' rigorous imprisonment and under Section 342, I.P.C, the appellant was sentenced to undergo three months' rigorous imprisonment and a fine of Rs. 100/-, and in default of payment of fine to further undergo fifteen days' rigorous imprisonment. It is against this order/judgment that the present appeal has been filed by accused Hazari.

3. I have heard the learned Counsel for the accused-appellant and the learned Public Prosecutor.

4. It is contended on behalf of the appellant that the witness in this case are not reliable witnesses. There is only one eye witness to the occurcence, viz., PW 8 Pratap Singh, who has not been believed by the learned lower Court so far as taking-away of Rs. 2000/-by the accused from the pocket of the complainant is concerned. There is no other evidence on record, which connects the appellant with the crime. He has further submitted that so far as the witnesses of the recoveries are concerned, they have not supported the prosecution case. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned lower Court convicting and sentencing the appellant.

5. I have considered the rival submissions.

6. There is only one witness to the incident, viz. PW 8 Pratap Singh. PW 8 Pratap Singh, in his examination-in-chief, has stated that he received the amount of T.S., which he brought to his residence at about 8.30 p.m. When Hazari was sleeping in the house of Kanhaiya Lal and on a call for him, he got-up and opened the door. In his presence he counted the currency notes and after counting them, he slept. At about 2.00 A.M. in the night, the accused touched his pocket, upon which he got-up. When he made some movement the accused gave a Kulhari blow on his left jaw and then the accused inflicted an injury on his nose with the Dhariya. As soon as he got-up, the accused again inflicted injury by Dhariya on his left hand. At that time, the accused was carrying the Kulhari in his right hand and Dhariya in his left hand. It has further been staled by the witnesses that he snatched both the weapons, i.e. Kulhari and Dhariya, from the accused and as the doors were open, the accused went away closing and letching the doors. Upon his raising alarm, witness Modho Lal came and enquired about the matter. The witness has further stated that by breaking the window by Kulhari, he came out and went to Bhopalsagar Hospital and got him medically treated and then lodged the report of the incident. Though he specifically mentioned in the examination-in-chief that Rs. 2000/- were taken-way by the accused, but in the cross-examination, he has admitted that the police personnel has wrongly mentioned the story of taking-away of currency notes of Rs. 2000/- from his pocket. This witness has tried to make improvement in his statement and has even tried to falsely implicate the appellant so far as the taking-away of the amount of Rs. 2000/- is concerned. His statement

further does not inspire confidence because he has stated that the accused was carrying the axe in his one hand and the Dhariya in another hand. A careful scrutiny of the statement of Pratap Singh (PW 8) clearly shows that he is not speaking the truth and is not narrating the incident in the manner in which it actually took and it appears that he is suppressing something. After a careful consideration of the statement of Pratap Singh (PW 8). I am of the opinion that he is not a fully-reliable witness and on the basis of the testimony of Pratap Singh (PW 8), the accused cannot be convicted. Apart from the statement of Pratap Singh (PW 8), there is no corroborative evidence. No witness has corroborated the version given by PW. 8 Pratap Singh. In this view of the matter, when PW 8 Pratap Singh is not a reliable witness, the appellant cannot be convicted for any offence and the prosecution has failed to prove the case against the appellant beyond reasonable doubt.

7. In the result, this appeal, filed by the appellant is allowed. The judgment dated May 29, 1990, passed by the learned Additional Sessions Judge, Chittorgarh, convicting and sentencing the accused-appellant Hazari is set-aside and the accused is acquitted of all the charges levelled against him. The accused is in jail. He may be released forthwith if not wanted in any other case.

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