

Chatara Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Sep-01-1982

Reported in : 1982WLN(UC)466

Judge : S.C. Agrawal, J.

Appeal No. : S.B. Criminal Jail Appeal No. 92/1982

Appellant : Chatara

Respondent : The State of Rajasthan

Disposition : Appeal dismissed

Judgement :

S.C. Agrawal, J.

1. This appeal has been filed from Jail by the appellant Chatara and it is directed against the judgement dated 12th February, 1982 passed by the Sessions Judge, Banswara in Sessions case No 25/81. In the aforesaid Sessions Case, two persons, namely, the appellant, Chatara and one Gautam, were prosecuted. The appellant was charged with offences under Section 395 read with Section 397, Section 457 and Section 324 IPC Accused Gautam was charged with offences under Section 395 read with Section 397, Section 457 and Section 323 IPC. The Sessions, Judge, by his judgment aforesaid, convicted the appellant of the

offences under Sections 392 and 324 and accused Gautam of the offence under Section 321 IPC. The said accused persons were acquitted of the other charges. The appellant has been sentenced to rigorous imprisonment for three years and to pay a fine of Rs. 100/- and in default of payment of fine to undergo rigorous imprisonment for one year under Section 394 IPC. He has been sentenced to rigorous imprisonment for three months and to pay a fine of Rs. 50/- and in default of payment of fine to undergo rigorous imprisonment for seven days under Section 324 IPC. Accused Gautam has been sentenced to simple imprisonment for one month and fine of Rs. 50/- and in default of payment of fine to undergo simple imprisonment for seven days under Section 323 IPC.

2. The prosecution of the accused persons for the offences referred to above relates to an incident, which is alleged to have taken place in the night intervening 19th and 20th May, 1980 outside the house of one Soma (PW 2) in village Patan. The case of the prosecution is that Soma (PW 2) his wife Smt. Dalla (PW 7) and their three children were sleeping outside their house on the night intervening May 19 and 20, 1980 and that at about 2.30 a.m. Soma woke up on hearing some foot steps and he saw 5-6 persons standing near his cot on the side of his head. Out of the aforesaid persons, Soma could identify the appellant and Gautam because it was a moonlight night. When Soma got up, Gautam threw a stone towards him which hit him on the right temporal region. Gautam, thereafter, hit a lathi blow on the back of Soma and thereupon Soma ran shouting and stood a distance of about 100 ft. Gautam was armed with a lathi and the appellant was armed with a knife. The appellant cut the golden 'Bore' (head ornament) of Smt. Dalla with the knife and inflicted injuries with the knife on the right wrist as well as palm of Smt. Dalla when she tried to resist. Thereupon, both the accused persons ran away. After sometime, Lalu (PW 6) and Phula (PW 5), who have their houses nearby arrived at the spot and Soma along with Lalu and Dhula went to the house of Kalu Sarpanch (PW 4) and narrated to him the incident and Kalu asked them to search for Gautam and thereupon they went to the house of Gautam but he was not found there. Soma informed Kalu about it. Kalu told them that he would come to Soma's house in the morning. In the morning, the villagers collected near the house of Soma and Gautam was also present there but he kept quiet. Soma and Smt. Dalla then went to the hospital at Banswara where they were examined by Dr. P.L.

Bhardwaj (PW 1) on 20th May, 1980 vide injury reports Ex. P. 1 and Ex. P 2. Injury report Ex P. 1 relates to Soma and shows that a contused wound was found on the right temporal region Injury Report Ex. P 2 shows that an incised wound was found on the right wrist of Smt. Dalla. The FIR (Ex. P. 5) about the incident was lodged at P.S. Kalinger by Dhula on 20th May, 1980 at 6.30 p.m. and on the basis of the said FIR, a case was registered and investigation was started. The appellant Chatara was arrested on 5th November, 1980 and on the basis of the information (Ex. P. 8) given by the appellant on 10th November, 1980 that he had sold the golden 'bore' of Smt. Dalla to Devilal Sunar, the police went to the house of Devilal Sunar and recovered the gold nuggat weighing five grams on 13th November, 1980 vide Recovery Memo (Ex. P. 9). After completing the investigation, the police submitted a challan against the appellant and Gautam and two other persons Mangala & Gavaji. Accused Mangala and Givaji we'e, however discharged since there was no evidence against them and the appellant and Gautam were tried for the offences referred to above.

3. The prosecution, in support of its case examined nine witnesses out of whom Soma (PW 2) and Smt. Dal(sic) (PW 7) are the eye witnesses of the occurrence and Dhula (PW 5) and Lalu (PW 6) are the persons who had reached the (sic) after the incident and have deposed that Soma and Smt. Dalla had named the appellant and Gautam amongst the person who had c me t their house and had caused injuries to them and had taken away the golden ornament of Smt. Dalla. The prosecution has also examined Kalu Ram Sarpanch (PW 4) who has deposed about the visited Soma, Dhula and Lalu to his house at mid-night aid their having narrated the incident to him and having named the appellant and ac used Gautam amongst the person responsible (sic) accused persons in the statement recorded (sic) 313 Cr. PC pleaded no guilty and submitted h. t they have been falsely implicated due to previous enmity.

4. The Sessions Judge has held that from the evidence of Soma & Smt. Dalla (PW 7) which finds support from the evidence of Dhula (PW 5), Lalu (PW 6) and Kaluram (PW 4), it is established that Gau am and the appellant had come to the house of Soma a(sic)d had inflicted injuries on the; persons of Soma and his wife Smt. Dalla and that Gautam was armed with a lathi and appellant was armed with

a knife and th(sic) t the appellant had cut the golden 'bore' from the head of Smt Dalla with the knife and had inflicted in pries on her person with the knife. The sessions Judge was of the view that (sic) established that the golden nuggat which has been recovered from Devilal Sunar has been prepared by melting the golden 'bore' of Smt. Dalla and that the aforesaid recovery of the golden nuggat (sic)ooes not assist the prosecution case. The Sessions Judge was, however, of the view that from the evidence of Soma and Smt. Dalla, it has been established beyond reasonable doubt that on the night of the incident, six persons had come to their houses, and out of them, Soma and Smt. Dalla could identify appellant and Gautam and that soon after the incident, Dhula and Lalu had arrived at the scene and Soma and Smt Dalla had narrated the incident to them and also mentioned that they had identified the appellant and Gautam and this fact was also-corroborated by the evidence of Kalu Ram (PW 4). According to the Sessions Judge, the presence of the Appellant and Gautam at the scene of the occurrence was, thus, established from the evidence of Soma and Smt. Dalla, Lalu, Dhula and Kaluram and that there was no reason not to accept their testimony. The Sessions Judge also held that from the evidence of these witnesses, it is also established that accused Gautam had caused the injury on the right temporal region of Soma by stone and that the appellant had cut the golden 'bore' from the head of Smt. Dalla with a knife and while he was doing so Smt. Dalla put up resistance and the appellant inflicted injury on the wrist of the right hand of Smt Dalla with a knife and that the aforesaid injuries that were inflicted on the persons of Soma and Smt. Dalla are proved by Dr. P.L. Bhardwaja (PW 1), who has also proved the injury reports Ex P. 1 and P. 2 The Sessions Judge was, however, of the view that since the incident had taken place out-side the house of Soma and Smt. Dalla, it was not established that all the accused persons had gone there with the object of committing the(sic)f or dacoity and the Sessions Judge-was also of the view that since accused Gautam had only caused injury to Soma and had not given any assistance to the appellant in the cutting of the 'bore', it could not be said that all the accused persons had come with the object of cutting the 'bore' of Smt. Dalla. The Sessions Judge, therefore, convicted the appellant under Sections 392 and 324 and accused Gautam under Section 323 IPC. As regards the charge under Section 457 IPC, the Sessions Judge held that Soma and his wife Smt. Dalla as

well as the children were sleeping outside their house and, therefore, an offence under Section 457 had not been made out. The Sessions Judge, therefore, acquitted the accused persons of the offence under Section 457 IPC.

5. Being aggrieved by the aforesaid judgment of the Sessions Judge, the appellant has filed this appeal from Jail. Since the appellant was not represented by counsel, Mr. B. Advani was appointed as Amicus Curiae to represent the appellant before this Court.

6. I have heard Mr. B. Advani in support of the appeal and the learned Public Prosecutor.

7. Mr. Advani has submitted that the Sessions Judge, having held that the recovery of the golden nuggat did not lend any assistance to the prosecution case, has erred in convicting the appellant under sections 392 and 324 IPC.

8. It is true that the recovery of the golden nuggat from the possession of Devilal Sunar does not lend any assistance to the prosecution case in as much as it has not been established that the said golden nuggat has been obtained by melting the golden 'bore' which is said to have been removed by the appellant from the person of Smt. Dalla. But even if the aforesaid evidence about the recovery of the golden nuggat is excluded from consideration, there is other evidence on the basis of which the conviction of the appellant under Sections 392 and 324 IPC can be upheld. In this count reference may be made to the evidence of Soma (PW 2) and his wife Smt. Dalla (PW 1) who are the eye witnesses of the occurrence. Both these witnesses have categorically stated that they had seen and identified the appellant and accused Gautam amongst the 5-6 persons who had come to their house on the night of the occurrence. The said witnesses have deposed that appellant was armed with a knife and accused Gautam was armed with a lathi and that Gautam had first caused injury on the right temporal region of Soma with a stone and thereafter, he gave a lathi blow on the back of Soma. The aforesaid witnesses have also deposed that the appellant cut the 'bore' from the head of Smt. Dalla and when Smt. Dalla tried to resist, the appellant inflicted an injury on the wrist of the right hand of Smt. Dalla with the knife. The aforesaid evidence of Soma and Smt. Dalla finds corroboration from the evidence of Dhula (PW 5) and

Lalu (PW 6) who live near by and had arrived at the scene of occurrence on hearing the shouts of Soma soon after the occurrence and have deposed that both Soma and Smt. Dalla had named the appellant and accused Gautam amongst the persons who had come to their house & caused injuries and had taken away the golden 'bore' of Smt. Dalla. The evidence of Soma and Smt. Dalla also finds corroboration from the evidence of Kalu Sarpanch (PW 4), who has stated that Soma and Lalu had come to his house in the night at about 2 a.m. and had narrated to him about the incident and had also given the names of the appellant and accused Gautam amongst the persons who had entered the house of Soma. The evidence of Soma and smt. Dalla also finds corroboration from the FIR (Ex P. 5) lodged by Dhula at P.S. Kalinger. The said FIR was lodged on 20th May, 1980 at 6.30 p.m. since distance between village Patan and the police station is about 17 kmss., it cannot be said that there has been undue delay in lodging the said report. The evidence of Soma and Smt. Dalla also finds corroboration from the evidence of Dr. P.L. Bharadwaj (PW 1) who has proved the medical injury report Ex. P. 1 relating to the injury on the person of Soma and the medical injury report Ex. P. 2 relating to the injuries found on the person of Smt. Dalla. In my opinion, the Sessions Judge has rightly placed reliance on the testimony of Soma (PW 2) Smt. Dalla (PW 7) and on the basis of the evidence of the aforesaid witnesses, it is established that the appellant was amongst the persons who had come to the house of Soma on the night of the occurrence and had cut the golden 'bore' from the head of Smt. Dalla and had caused injury with a knife on the person of Smt. Dalla. In the circumstances, the appellant has been rightly convicted of the offences under Sections 392 and 324 IPC and the conviction of the appellant Chatra for the aforesaid offences must be upheld.

9. Mr. Advani submitted that the appellant was arrested on 5th November, 1980 and is in custody ever since and that in view of the fact that he has undergone imprisonment for nearly two years, the sentence may be reduced to the period of imprisonment already undergone. I have given careful consideration to the aforesaid submission but looking into the facts and circumstances of the case, I am of the opinion that this is not a fit case in which any leniency should be shown in the matter of awarding the sentence, In my view, the sentence that has been imposed by the Sessions Judge is adequate and I find no reason to interfere with

the same by reducing it. I would, therefore, up-hold the sentence that has been imposed on the appellant by the Sessions Judge for the offences under Sections 392 and 324 I.P.C.

10. In the result, I find no merit in this appeal and it is, therefore, dismissed and the conviction of the appellant under Sections 392 and 324 IPC and sentence imposed on him for the aforesaid offences under the judgment of the Sessions Judge, Banswara dated 12th February, 1982 are upheld.

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