

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Hanuman Singh Vs. State of Rajasthan
(D.B. Criminal Appeal No.939/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C.
against the judgment dated 12-10-2001 in Sessions
Case No.89/2001 (119/1997) passed by Shri Mithlesh
Kumar Sharma, RHJS, Additional Sessions Judge
(Fast Track) Ajmer.

Date of Judgment:

July 31, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Neeraj Sharma, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Hanuman Singh, appellant herein, was put to trial for having committed murder of Laxman before learned Additional Sessions Judge (Fast Track) Ajmer, who vide judgment dated October 12, 2001 convicted and sentenced him under section 302 IPC to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer simple imprisonment for three months.

2. In the blue print, drawn for the purpose of erecting superstructure of prosecution case, parents of the deceased viz. Mohan Singh and Lali Devi were not shown as eye witnesses of the occurrence but they

became eye witnesses at the trial. Anand, the brother of Laxman, who was not named as witnesses, also became eye witness of the incident. In the written report lodged by Mohan Singh on June 23, 1997 at 12 AM at Police Station Alwar gate Ajmer, it was stated that his son Laxman, who had left the house at 8 AM was seen by him around 10.30 PM sitting on a slab near his house. He (Mohan Singh) then went to sleep. Around 11.30 PM on hearing noise of quarrel, he suddenly woke up and peeped from the window. He saw that Hanuman was beating to Laxman. One Dharmendra was also there, who persuaded Hanuman to stop the quarrel. Hanuman then accompanied Dharmendra and went to the house. After some time he (Mohan Singh) woke up his wife, who proceeded to the road and found Laxman lying in a pool of blood. He himself went out noticed that Laxman was dead. On that report a case under section 302 IPC was registered and investigation commenced. Dead body was subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Ajmer. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 12 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. One witness in support of his defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard the submissions advanced before us and weighed the evidence on record.

4. Death of Laxman was undeniably homicidal in nature. As per Post Mortem Report (Ex.P-12) following ante mortem injuries were found on the dead body:-

1. Abrasion 3 x 1.5cm on Lt. side of forehead.
2. Abrasion 0.5 x 0.5 on nasal bridge upper part.
3. Abrasion 3 x 2.5 cm on Rt. shoulder, anter part.
4. Stab wound 2.5 x 1.5 on Rt. side upper part of chest front just below collar bone, the wound is obliquely placed with upper angle rounded and lower single pointed.
5. Incised wound 2 x 1cm x skin deep just 1.5cm below nipple with tailing toward upper part.
6. Stab wound 3 x 1cm on anterior auxiliary line in lower 1/3rd of chest medial angle is pointed and outer angle is rounded.
7. Incised wound 1 x 0.5 x skin deep at xi phi sternum
8. Incised wound 1 x 0.5 x skin deep 6cm above umbilicus an abdomen in mid line.
9. Stab wound 2 x 1cm Lt. subconstal margin the medial angle is part and lat gal is rounded.

In the opinion of Dr. P.K. Saraswat (Pw.8) the cause of death was shock due to bleeding from internal injury to vital organs Rt. lung and liver.

5. Making improvement in the facts stated in the FIR informant Mohan Singh (Pw.1) deposed that around 11.30 PM on June 22, 1997 he saw Hanuman inflicting injuries with some weapon on the person of Laxman. He thereafter woke up his wife and son Anand. Informant however admitted in his cross examination that in the FIR (Ex.P-1) he did not state that he had seen Hanuman inflicting injuries to Laxman. Lali Devi (Pw.7) stated that while she and her son Anand were seeing Television around 11.30 PM she suddenly heard the shouts of her husband that somebody was beating Laxman. She then went out and saw Hanuman armed with Gupti and Laxman had sustained injuries. On hearing her hue and cry her husband and

son Anand also came out of the house. Anand (Pw.2) in his deposition stated that on hearing the voice of his father when he went out of the house, he saw Hanuman and Dharmendra inflicting injuries with Gupti to his brother Laxman. This fact was however not mentioned in his police statement Ex.D-1. Dinesh Bohra IO (Pw.11) deposed that there was no source of light at the place of incident:-

मैंने रात्रि का समय व अंधेरा होने के कारण कोई लिखा पढ़ी मौके पर नहीं की थी।

He further stated that neighbours of informant viz.Gajendra Singh, Chandan Singh, Ramesh and Nathu Singh came to the police station along with informant Mohan Singh and he recorded their statements. These witnesses did not inform him as to who caused injuries to Laxman.

6. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubt and requirement of proof cannot lie in the realm of surmises and conjectures. In order to establish charges the prosecution has to adduce reliable and trustworthy witnesses. Statements recorded by the police under section 161 CrPC can be used for cross examining prosecution witnesses. Section 162 CrPC lays down that when any witness who was examined by the police, is called for by the prosecution at an inquiry or trial in respect of any offence, his previous statement may be used for the purpose of contradiction by the accused under section 145 Evidence Act. The credit of a witness may be impeached by contradicting him with his previous inconsistent statements. The evidence of witness has to be assessed by the intrinsic worth. If there are contradictions in the evidence and if by such contradictions the veracity of the evidence is

affected, it can be a ground for the court to reject the evidence of such witness.

7. In the case on hand, as already noticed the incident occurred in the odd hours of night. There was no source of light at the place of incident. The three eye witnesses examined by the prosecution are close relatives of the deceased. These witnesses were not projected as eye witnesses by the Investigating Officer, but at the trial these witnesses changed their role and became eye witnesses. There are material contradictions in their statements that affects the veracity of the evidence. It appears that these witnesses although did not see the incident they had strong suspicion against the appellant.

8. In *Ashish Batham Vs. State of M.P.* (2002)7 SCC 317, their Lordships of Supreme Court indicated that mere suspicion, howsoever strong it may be, cannot take the place of legal proof. It was observed as under:-

“Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Court dealing with criminal case at least should constantly remember that there is a long mental distance between “may be true” and “must be true” and this basic and golden rule only helps to maintain the

vital distinction between “conjectures” and “sure conclusion” to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.”

9. Having closely scrutinised entire material on record we could not notice an iota of evidence that could conclusively establish the guilt of appellant. On the basis of probability and suspicion, liability to commit crime cannot be fastened on the appellant. Learned trial court appears to have convicted the appellant on surmises and conjectures, therefore the impugned judgment deserves to be quashed.

10. For these reasons, we allow the appeal and set aside the impugned judgment dated October 12, 2001 of the learned Additional Sessions Judge (Fast Track) Ajmer. We acquit the appellant of the charge under section 302 IPC. The appellant Hanuman Singh, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Guman Singh),J.

(Shiv Kumar Sharma)J.