
(2004) 09 RAJ CK 0028
In the Rajasthan High Court
Case No : Criminal Appeal No. 713 of 2001

Hanuman

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 202, 302, 506

Citation : (2005) 2 RLW 855 : (2004) 4 WLC 596

Hon'ble Judges : Shiv Kumar Sharma, J; Rajendra Prasad Vyas, J

Bench : Division Bench

Advocate : V.P. Bishnoi, for the Appellant; M.L. Goyal, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The appellant was indicted before the learned Additional Sessions Judge, No. 2, Kishangarh Bas District Alwar in Sessions Case No. 162/1998 for having committed murder of Jhutar Mal. Learned Judge vide judgment dated August 31, 2001 convicted and sentenced the appellant thus:-

Under Section 302 IPC:

To suffer Imprisonment for life and fine of Rs. 2000/-, in default to further suffer Three Years Rigorous Imprisonment.

Under Section 506 IPC:

To suffer Rigorous Imprisonment for Two Years and fine of Rs. 500/-, in default to further suffer Six Months Rigorous Imprisonment.

Under Section 201 IPC:

To suffer Rigorous Imprisonment for Four Years and fine of Rs. 2000/-, in default to further suffer One Year Rigorous Imprisonment.

The substantive sentences were directed to run concurrently.

2. As per the prosecution story the informant Kamla Devi (PW.1) wife of Jhuthar Mal (now deceased) submitted a written report at Police Station Mandawar on June 29, 1998 with the averments that on June 27, 1998 at around 9.00 PM her husband Jhuthar Mal soldier of Indian Army had come to his home on vacation and finding that the appellant (nephew of Jhuthar Mal) made assault on his own father, Jhuthar Mal reprimanded the appellant who in turn issued a threat to liquidate Jhuthar Mal. On the fateful day, at around 10.00 PM when Jhuthar Mal had gone out side the house to urinate, the appellant dealt blows with a knife on the chest and stomach of Jhuthar Mal who raised an alarm, responding to which, the informant and her sister's daughter Tara came rushing out of the house and saw Jhuthar Mal lying on the ground. The appellant on seeing both of them went inside his house. While going inside he stated that he had done his job and they can now take care of the deceased. A crowd gathered from the near vicinity and finding that the deceased was still alive, he was taken to the Hospital in Kalu Ram's jeep. When the informant made an attempt to alight in the jeep Rajendra Vakil and Ramotar prevented her on the pretext that what she would do and that they all would take care of her husband. The informant did not know as to where her injured husband was kept throughout the night. In the morning, her husband was brought back to his house and she was told that her husband had died. She thereafter became unconscious. On regaining consciousness, she learnt that her husband's cremation was already over at the instance of all these persons in order to destroy the evidence. When she was about to leave to the Police Station to report the matter, appellant issued a threat to her life. Subsequently, when her relations came to see her, she lodged the report. On the basis of the said report, Police Station Mandawar, registered a case for offences under Sections 302 and 201 IPC and investigation commenced. On completion of investigation charge sheet was filed. In due course, the case came up for trial before the learned Additional Sessions Judge No. 2 Kishangarh Bas, District Alwar. Charges for offences under Sections 302, 202 and 201 IPC were framed against the appellant who denied the charges and claimed trial. The prosecution in support of his case examined as many as 13 witnesses. In the explanation recorded u/s 313 Cr.P.C. The appellant claimed innocence and pleaded that he was implicated falsely. In defence no witness was however examined. On hearing the final submissions, the learned trial judge, convicted and sentenced the appellant as indicated above.

3. Mr. Bishnoi, learned counsel for the appellant vehemently canvassed that there is no evidence on record to connect the appellant with the crime. The FIR was lodged with an inordinate delay of three days which caused a shadow of doubt on the credibility of the prosecution case. Since, there is no eye witness of the occurrence, the appellant could not have been convicted and sentenced. Alleged recovery of katar was not effected from the exclusive possession of the appellant and in absence of FSL Report about the blood found on Katar it could not be connected with the offence alleged.

4. Per contra Mr. M.L. Goyal, learned Public Prosecutor supported the impugned judgment and urged that the evidence adduced at the trial is trustworthy and benefit of minor discrepancies can not be given to the appellant.

5. Having analysed the material on record we find that written report (Ex.P-1) which was lodged on June 29, 1998 at around 10.00 PM i.e. after three days of the incident demonstrates that the informant Kamla Devi did not see the occurrence from her own eyes. In her cross examination also she stated that when on hearing hue and cry she came out of the house, she found her husband lying in a pool of blood. Tara (PW.2) is also not an eye witness. In her deposition she stated that when she came out of the house, she saw Jhuthar Mal having injuries on his person. Vikram Singh (PW.3) son of the deceased who was examined as eye witness, deposed that he saw appellant inflicting knife blows on the person of his father. On examining the testimony of Vikram Singh from the point of view of trustworthiness we find him wholly unreliable witness. There are various reasons that support our conclusion. Kamla Devi in the FIR did not name Vikram Singh as eye witness of the incident. If for a while we believe the explanation of Kamla Devi that she became unconscious after the incident, then why Vikram Singh kept mum? If he was the eye witness why did he not lodge the report. Why did he allow dead body of his father to be cremated. Why did he not ask for the autopsy of the dead body? Conduct of Vikram Singh in participating in cremation ceremony quietly without lodging any protest and then on June 30, 1998 suddenly stating before the police that he had seen the incident, creates doubt about his presence at the time of the incident. It is a sound rule of appreciation of evidence that if the testimony of a witness is to be used as the sole basis of conviction it should be of such a caliber as to be regarded as wholly reliable. The blemish attached to a witness as a partisan witness stands in the way of his evidence becoming wholly reliable and hence without adequate reassurance from other circumstances or materials it may not be safe to record conviction on the basis of such testimony.

6. So far the evidence in regard to recovery of "Katar" is concerned it may be noticed that Rajendra Sharma, Investigating Officer (PW.8) admitted in his cross examination that the place of recovery was an open land accessible to all. The fact that blood found on Katar was human blood could not be established since FSL report was not made as part of the record.

7. Salient features of the case may be summarised thus:-

- i) Autopsy on the dead body was not performed.
- ii) FIR was lodged after three days of the occurrence.
- iii) Conduct of eye witness Vikram Singh is highly unnatural. He took part in cremation ceremony and kept mum for three days. His name was not mentioned as eye witness in the FIR lodged by her mother.
- iv) It could not be established beyond reasonable doubt that "Katar" allegedly

recovered at the instance of the appellant was the same weapon which was used in commission of the crime. Even the recovery of "Katar" was effected from an open place accessible to all.

8. For these reasons, we allow the appeal and set aside the impugned judgment dated August 31, 2001 of the learned Additional Sessions Judge, No. 2, Kishangarh Bas District Alwar passed in Sessions Case No. 162/1998. We acquit the appellant Hanuman of the charges under Sections 302, 506 and 201 IPC. The appellant who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.