

CASE NO.:
Appeal (crl.) 666 1991

PETITIONER:
STATE OF RAJASTHAN

Vs.

RESPONDENT:
HANUMAN

DATE OF JUDGMENT: 04/12/2000

BENCH:
S.S.M.Quadri, D.P.Mohapatro

JUDGMENT:

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J U D G M E N T

D.P.MOHAPATRA, J.

This appeal filed by the State of Rajasthan is directed against the judgment of the High Court of Rajasthan in Criminal Appeal No.147/85 acquitting the respondent-Hanuman of the charge under Section 302 IPC on setting aside the judgment and order of conviction passed by the learned Sessions Judge, Ajmer, in Sessions Case No.49/1983.

Shorn of unnecessary details the prosecution case may be stated thus :@@
JJJJJJ

On 9.10.1982 at about 6.00 p.m. when Panchu the deceased tried to draw water from the common well to irrigate his lands and change the course of the water towards his fields the respondent-Hanuman and co-accused Ganesh and Ram Kumar forbade him from doing so. Ganesh caught hold of Panchu and Hanuman gave three blows on his head with an axe held by him. When Smt. Badam, wife of Panchu and his sister Chhoti intervened to save him from the assault of Hanuman, Ram Kumar assaulted them with a Kassi. On hearing the cry of Chhoti, Arjun came to the spot from the field nearby and on seeing him the accused persons fled away. Chhoti immediately rushed home and reported the incident to her brother Balu who on reaching the spot found Panchu lying on the ground with serious head injury. He took Panchu home in a cart and from there he was taken to the government hospital at Kishangarh where the doctors declared him dead. Smt. Badam and Chhoti who had also sustained injuries, accompanied Panchu to the hospital. They were examined by Dr.C.L.Sharma (PW 5) who also conducted the autopsy on Panchu. Balu lodged the FIR in Kishangarh Police Station at about 10.00 p.m. on 9.10.82.

The Police sprung into action, conducted investigation and on completion of the investigation chargesheet was submitted under Section 302, read with Section 34, and Sections 323 and 324 against Hanuman, Ganesh and Ram Kumar. The accused persons having denied the charges faced trial. The prosecution examined in all 12 witnesses including Chhoti PW-1 and Smt. Badam PW-2, who are the eye-witnesses to the occurrence, Balu PW-3 and Arjun PW-6 who are post occurrence witnesses, Dr.C.L.Sharma, PW-5, who conducted the post-mortem examination and Dayal Singh PW-10, and the Investigating Officer. The learned Sessions Judge on appreciation of the evidence accepted the ocular of PWs 1 & 2 which was corroborated by the medical evidence and convicted Hanuman, the respondent herein, under Section 302 IPC and sentenced him to life imprisonment and a fine of Rs.1,000/-, acquitted accused Ram Kumar of the charge under Section 302 read with Section 34 IPC but held him guilty under Sections 323 and 324 IPC and gave him benefit of Section 4(1) of the Probation of Offenders Act subject to the condition that he produces one surety of Rs.1,000/- and one more surety with the condition that he will maintain good conduct for a period of one year and will not disturb the

peace and will present himself for suffering the punishment whenever required. Accused Ganesh was acquitted of all the charges framed against him.

Against the judgment of the learned Sessions Judge accused Hanuman filed the appeal in High Court which was disposed of by the impugned judgment in the manner noted earlier.

The High Court set aside the judgment of the learned Sessions Judge on two grounds - that both the eye-witnesses PWs 1 and 2 are highly interested persons and since their evidence is in direct conflict with the medical evidence the same cannot be relied upon, and that the prosecution has not explained the injuries found on the accused persons.

We have carefully perused the judgments passed by the learned Sessions Judge and by the High Court. We are of the view that both the reasons stated by the High Court in the impugned judgment are unsustainable. The position is well settled that evidence of eye-witnesses cannot be discarded merely on the ground that they are relatives of the deceased. Normally close relations of the deceased are not likely to falsely implicate a person in the incident leading to the death of the relation unless there are very strong and cogent reasons to accept such criticism. Further, from the testimony of the two ladies Smt. Badam and Chhoti whose presence at the spot was not disputed by the defence it is clear that they have described the incident in a clear and graphic manner. They have categorically asserted that respondent- Hanuman gave three blows with his axe on the head of Panchu. Though the witnesses were subject to searching cross-examination nothing material could be elicited from them which may cast a doubt on their credibility. The learned trial judge who had the opportunity of marking their demeanor in the Court assessed their evidence and did not find any good reason to discard their testimony. In the circumstance the High Court committed an error in discarding their testimony on this ground.

The other question that arises is whether the ocular evidence of PWs 1 and 2 is against the medical evidence in the case. The High Court has answered the question in the affirmative going by the statement of the two eye-witnesses that Hanuman gave three blows on the head of the deceased Panchu with the axe but the Doctor PW-5 found only one injury on the head of the deceased. PW-5 found the following injuries on the deceased :

"i) Lacerated wound of cmx2.5 cm bone deep on the occipital region at skull in oblique direction with multiple fractures of occipital bone in small pieces with a cut of 2 cm long on skull. Small portion of brain was also seen.

ii) The small abrasions on left side of forehead over an area of 4 cm x 4 cm;

iii) Abrasions 1.5 cm x 1 cm on the roof of nose. All the above injuries were ante-mortem in nature. As per external injury with little clot under the scalp there were multiple fracture of occipital bone. There was laceration of membrane under the injury no.1. There was a laceration 4 cm x 2cmx2cm on brain in occipital region just below injury no.1 with a blood clot. The cause of death was shock due to severe haemorrhage from laceration of brain and multiple fracture of occipital bone. The above injuries were inflicted by blunt weapon. These injuries could be inflicted by blunt side of a spade or an axe. Injury no.1 was sufficient in the ordinary nature to cause death."

From the evidence of PW-5 it is clear that the injury found on the head of the deceased was possible if the blow was struck with the blunt side of the axe and the said injury was sufficient in ordinary course to cause death. The learned Sessions Judge advertent to the contention of the defence regarding improbability of the version of the eye-witnesses observed that their statement to the effect that three blows with the axe dealt on the head of the deceased cannot be correct and it appears that only a single blow was given on the head. It is relevant to note here that other injuries have also been found by the doctor on the face and shoulder of the deceased. Reading the statement of the eye-witnesses and the evidence of the doctor we do not find any serious contradiction between the two which may form the basis for discarding the testimony of the eye-witnesses. The High Court, in our view, was clearly in error in rejecting the ocular evidence on that ground.

Coming to the other reason stated in the judgment under challenge that the prosecution has not explained the injuries found on the respondent-Hanuman the learned trial judge had considered this question. The High Court did not accept the contention of the prosecution that there is no acceptable evidence to show that Hanuman suffered the said injuries in course of the incident giving rise to the criminal case and also that the injuries are minor in nature.

The High Court did not deal with the reasons given by the trial court before casting a doubt on the prosecution case making a general observation that it has not explained the injuries found on the respondent-Hanuman. The prosecution is not bound to explain injuries found on the accused in all cases. It is to be kept in mind that

according to the defence case the occurrence took place when the respondent-Hanuman wanted to use the facility of drawing water from the tube-well when his turn came at 6.00 p.m. on the fateful day, then Panchu assaulted him with a lathi whereafter Hanuman in his defence pushed him and Panchu fell on the ground hitting a stone which resulted in the head injury supplied by him. It was the further case of the defence that the two ladies PWs 1 and 2 pelted stones on the accused persons causing injuries to them. The learned trial judge on discussion of the evidence of the witnesses examined on behalf of the defence had discarded the defence version. The High Court has neither discussed the evidence of the defence witnesses nor given any reason for not accepting the finding of the trial court in this regard, but merely observed that the prosecution having failed to explain the injuries on the respondent-Hanuman, its case cannot be accepted. No doubt the appellate court should assess the evidence on record with a view to satisfy itself that the appreciation of evidence by the trial court is not vitiated on account of any erroneous approach or illegality and it is not palpably erroneous. The sustainability of the judgment depends on the soundness of the reasons given in support of the findings and the conclusion. On the discussions and for the reasons stated in the foregoing paragraphs the appeal is allowed, impugned judgment is set aside and the judgment of the trial court convicting respondent-Hanuman under Section 302 IPC and sentencing him to undergo rigorous imprisonment for life and a fine of Rs.1,000/- is restored.