

Supreme Court of India

Hanuman vs State Of Rajasthan on 25 November, 1993

Equivalent citations: 1994 AIR 1307, 1994 SCC Supl. (2) 39

Author: A Anand

Bench: Anand, A.S. (J)

PETITIONER:

HANUMAN

Vs.

RESPONDENT:

STATE OF RAJASTHAN

DATE OF JUDGMENT 25/11/1993

BENCH:

ANAND, A.S. (J)

BENCH:

ANAND, A.S. (J)

SINGH N.P. (J)

CITATION:

1994 AIR 1307

1994 SCC Supl. (2) 39

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.Eight persons, namely, Basti Ram, Samander, Hanuman, Chunnilal, Dhyala, Harnath, Sultan and Godu Ram were prosecuted for offences under Sections 302 and 201 IPC. They were tried by the learned Sessions Judge who convicted Basti Ram and Hanuman under Section 302 IPC and sentenced each one of them to suffer imprisonment for life. Samander and Dhyala were convicted for offence under Section 201 IPC and were sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs 200 each and in default of payment of fine to undergo rigorous imprisonment for a further period of six months. The remaining four accused, namely, Harnath, Sultan, Godu Ram and Chunnilal were acquitted.

2.Basti Ram, Hanuman, Samander and Dhyala filed an appeal challenging their conviction and sentence while the State of Rajasthan filed an appeal against the acquittal of Samander for the offence under Section 302 IPC and of Harnath, Sultan, Godu Ram and Chunnilal for their acquittal

for this offence under Section 201 IPC. The High Court, vide judgment dated May 12, 1983, set aside the conviction of Basti Ram and Hanuman for an offence under Section 302 IPC. Hanuman was, however, convicted for an offence under Section 201 [PC and sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs 200 and in default to suffer further rigorous imprisonment for six months. The conviction of Samander and Dhyala for the offence under Section 201 IPC and the sentence imposed upon them for the said offence was also affirmed by the High Court. The convicts are before us in appeal by special leave against their conviction and sentence.

3. In short the prosecution case is that Uda Ram had no son and had only two daughters, namely Bhuji and Sharbati. Basti Ram, who stands acquitted by the High Court is the son of Bhuji while Chandgi Ram deceased was the son of Sharbati. It was shortly after the death of Uda Ram that disputes arose between Basti Ram and Chandgi Ram regarding the lands of Uda Ram. On account of these disputes, some criminal litigation started between the parties and a case under Section 307 IPC was registered against Chandgi Ram which was pending disposal on the date of occurrence. Chandgi Ram on account of the strained relations, left the village Bharonda and started living in village Bugala. Basti Ram, however, continued to stay at village Bharonda where the lands of Uda Ram were situated. On the festival of Teej which fell on August 12, 1972 Basti Ram came to village Bugala and he along with Samander and Hanuman called Chandgi Ram in the evening to his chhappar. The parties discussed about the division of lands. Chandgi Ram was later on sent for by his wife and mother to have his meals and he returned to his Kotha for having his meals and told his wife and others about the discussion with Basti Ram. After taking his meals Chandgi Ram retired to his Kotha where he was to sleep alone. His mother Smt Sharbati PW 14, his wife Smt Ramkauri, PW 7 and his sister Manbhari, PW 11 along with his other brother Khyali, slept in the other room of the same Kotha. In the morning of August 13, 1972 the sister of Chandgi Ram, Manbhari PW 11, went to leave the beddings in the Kotha in which Chandgi Ram was sleeping and discovered that a rope was tied round the neck of Chandgi Ram and he was dead. She shouted whereupon Ramkauri, PW 7 and Sharbati, PW 14 rushed to that room. Samander, one of the appellants, followed and is reported to have untied the rope from the neck of the deceased Chandgi Ram and took it away with him. Dhyala and Hanuman along with the wife of Dhyala also came there and all of them advised Ramkauri, Manbhari and Sharbati not to weep or make any noise as otherwise the police might suspect them or harass them. Some villagers, including neighbours, came to the house and the dead body of Chandgi Ram was brought out from his Kotha and placed on straws and covered by a cloth. PW 13, Ramdeo Singh, a teacher, had also reached the house of the deceased at about 7 a.m. on August 13, 1972, which happened to be a Sunday. According to him, he had seen a ligature mark on the neck of the deceased and some bleeding from the left ear and presence of mucus under the nose of the deceased. Suspecting that the death of the deceased was unnatural, he sent Jairam, PW 10 to the police station, Gudha to inform the police. Jairam PW 10 went to the police station and according to the Roznamacha entry D-6 recorded by the Head Muharir, he gave information to the police to the effect that some person had died in the village Bugala in suspicious circumstances without naming the deceased. Since, neither the name of the deceased nor any other details regarding the deceased were given, the report was considered to be vague and incomplete and no FIR was registered on the basis thereof. In the meantime, it appears, the body of the deceased was taken to the cremation ground and cremated.

4.The family members of Ramkauri, PW 7, the wife of the deceased on hearing about the death came to the house of their daughter and on August 17, 1972 Ramkauri, PW 7, accompanied them and went to her parental house. She is reported to have told them the story of the previous day. Next day i.e. on August 18, 1972 at about 8.30 a.m. FIR Ex. P-3 was recorded at police station Gudha on the basis of a written complaint and the case under Sections 302/201 IPC was registered and investigation commenced. The accused persons were arrested and later tried as noticed in the earlier part of this judgment.

5.There is no direct evidence of murder in this case. The circumstances under which the conviction under Section 201 IPC has been recorded by the Sessions Judge and the High Court alone need a notice at this stage, since the charge under Section 302 IPC has in any case failed and there is no appeal filed by the State against that acquittal. The three circumstances which were pressed into aid by the prosecution in support of the charge under Section 201 IPC before the trial court and the High Court were-

(i) the condition of the dead body as noticed by the witnesses showed that Chandgi Ram had been murdered;

(ii)that the accused persons had taken part in giving bath to the dead body even though they were aware of the condition of the dead body and had not waited for the police;

(iii)that even though the accused were asked to wait for the arrival of the police, they were in a hurry to get the dead body cremated and despite protestations took away the body for cremation and cremated the same.

6.Insofar as the first two circumstances are concerned since the charge under Section 302 IPC has failed it pales into significance, except the extent that the prosecution alleged that Chandgi Ram died an unnatural death and Jai Ram PW 10 saw a ligature mark on the neck and according to the wife and daughter of the deceased, Samander removed the rope from the neck and took it away. Who did the rope belong to? Why did the widow of the deceased not disclose to Jai Ram and other PWs, at the earliest opportunity about the removal of the rope? These questions have not been answered by the prosecution and the witnesses have offered no explanation about them either. Therefore, the mere fact that Chandgi Ram allegedly died an unnatural death would not be sufficient to bring home a charge under Section 201 IPC, unless the prosecution was further able to establish that the accused persons knew or had reason to believe that an offence had been committed, causing the evidence of the commission of the offence to disappear. We have gone through the evidence of the witnesses produced by the prosecution in detail. The widow of the deceased Ramkauri, PW 7 did not in her statement state that she had seen any blood coming out of the ear of the deceased. Even with regard to the question of giving bath to the deceased by the accused persons she is silent in her deposition, even though the brother of the deceased, Basti, must have taken part in the giving of the bath to the dead body before cremation. Manbhari, PW 11, the sister of the deceased did not disclose to the police the names of those who are alleged to have given a bath to the deceased although she tried to improve upon her statement in the court by naming the acquitted accused besides Dhyala

and others as the persons as who had given bath to the deceased. We are not satisfied that it was only the appellants before this Court who participated in giving bath to the deceased before cremation as according to the evidence on record, many neighbours had joined in giving a bath to the deceased, which is customary before a dead body is taken for cremation. Giving of bath, therefore, by itself could not be treated as a circumstance, much less a clinching one, to connect the appellants with an offence under Section 201 IPC.

7. Coming now to the third circumstance relied upon by the prosecution, Mr R. Sasiprabhu, learned counsel for the State laid some emphasis on that circumstance in an attempt to sustain the conviction of the appellant. The Division Bench of the High Court had analysed this circumstance and noticed that the accused persons had made preparations for the cremation of the dead body and while Hanuman remained at the house Samander and Dhyala along with others took the body to the cremation ground. After having so noticed, the Division Bench observed :

"As regards the evidence that has been adduced by the prosecution to prove that these accused persons had rushed with the cremation of the dead body even though they were asked to wait for the arrival of the police, we have held that reliance could not be placed on the said evidence."

8. After recording the finding, that there was no material on the record to show that the appellants had rushed with the cremation of the dead body or that they removed the dead body hurriedly, the High Court observed that there were other circumstance to connect the appellants with the offence under Section 201 IPC. However in vain; have we searched through the judgment as also the evidence on the record, for the existence of those circumstance. The evidence on the record is much too cryptic and scanty to bring home the charge to the appellants for an offence under Section 201 IPC as neither of the circumstances, either taken individually or collectively connects the appellants with an offence under Section 201 IPC. The circumstances relied upon by the prosecution do not lead only to the hypothesis of the guilt of the accused and are not inconsistent with their innocence. The prosecution has failed to establish the charge under Section 201 IPC against the appellants.

9. We find that both the learned Sessions Judge and the High Court also overlooked another important aspect in the case. Section 201 IPC reads as under :

"201. Causing disappearance of evidence of offence, or giving false information to screen offender.- Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false.

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10. A bare reading of the section would show that to bring home the charge, under Section 201 IPC the prosecution is obliged to establish that the accused knowing or having reason to believe that an

offence had been committed had caused the offence of the commission of that offence to disappear "with the intention of screening the offender from legal punishment" or with that intention given any information respecting the offence, which he knows or believes to be false. No finding has been recorded by the Sessions Court or the High Court to the effect that all those persons who gave bath to the dead body or went with the dead body to cremate it, did so "with the intention of screening the offender from legal punishment". Without recording such a finding, no conviction under Section 201 IPC could be maintained. In this respect it is pertinent to notice that the High Court did not record any finding much less clear or cogent to the effect that the deceased Chandgi Ram had, in fact, been murdered by known or unknown assailants and that the appellants were either the assailants themselves or in any event knew who the assailants were. Section 201 IPC, in the face of the material on the record, could not be pressed into aid.

11. Keeping in view, what we have stated above, we find that the conviction of the appellants for the offence under Section 201 IPC cannot be sustained. This appeal, therefore, succeeds and is allowed. The conviction and sentence of the appellants is set aside. The appellants are on bail. Their bail bonds shall stand discharged.