

Manaram vs State on 27 May, 2022

Bench: Sandeep Mehta, Vinod Kumar Bharwani

(1 of 23)

[CRLA-1041/2015]

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR
D.B. Criminal Appeal No. 1041/2015

Manaram son of Shri Heera Ram, by caste Jat, aged about 32
years, resident of village Kukunda, PS Dangiawas, Tehsil &
District Jodhpur.
(At present lodged in Central Jail, Jodhpur)

----Appellant

Versus

State of Rajasthan

----Respondent

For Appellant(s) : Mr. Vinod Kumar Sharma
For Respondent(s) : Mr. B.R. Bishnoi, AGC

HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI

Judgment pronounced on ::: 27/05/2022
Judgment reserved on ::: 19/05/2022

BY THE COURT : (PER HON'BLE MEHTA, J.)

1. The appellant herein has been convicted and sentenced as below vide judgment dated 11.09.2015 passed by the learned Additional Sessions Judge No.2, Jodhpur Metropolitan in Sessions Case No.19/2015:

Offences	Sentences	Fine	Compensation
Section 302 IPC	Life Imprisonment	Rs.5,000/- Rs.3,00,000/-	

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2. Being aggrieved of his conviction and sentences, the

appellant has preferred the instant appeal under Section 374(2) Cr.P.C.

3. Brief facts relevant and essential for disposal of the appeal are noted herein below:

The co-convict Ladu Devi (since expired) was married to the deceased Shri Hanuman Ram. Two children were born from the wedlock. Hanuman Ram was employed in the Armed Forces and was posted at Himachal Pradesh as a Nayak at the time of the incident. On 24.08.2013, Hanuman Ram was on leave and was staying in quarter No.252/8, Lancer Line Residential Colony, Jodhpur with his family. In the night intervening 24 th/25th August, 2013, Hanuman Ram was found hanging in the army quarter. At about 03.15 AM, son of the deceased approached Shri Harendra Kumar Rai on Guard Duty and told him that his father had hanged himself at the quarter. Harendra Kumar Rai immediately informed the Guard Commander Anil Kumar Rai who instructed him to proceed to the place of incident saying that he was also following. The Guard Harendra Kumar Rai accompanied the boy and reached the quarter where a man was seen hanging from the ceiling fan with a loop of bed-sheet. His feet were touching the ground. The guard checked the pulse and breath but received no response upon which, he came out of the quarter. In the meantime, the Guard Commander Anil Kumar Rai also reached the spot. Both went inside the quarter and saw that the bed-sheet had been cut down. The man's wife was standing nearby and was trying to rub his chest. The Guard Commander also checked the man for signs of life but he too did not feel anything. Hanuman Ram's relatives (3 of 23) [CRLA-1041/2015] were informed. Shri Padma Ram, brother of the deceased Hanuman Ram. He reached the Military Hospital where he was told that his brother had committed suicide. He filed a report (Ex.P/1) to the SHO, Police Station Mahamandir stating therein that his brother Hanuman Ram Choudhary was on leave and had come to Jodhpur. He was staying in the quarter No.252/8, Lancer Line Army Area, Jodhpur. He committed suicide inside his quarter in the night of 25.08.2013.

4. On the basis of the report submitted by Padma Ram to the SHO Police Station Mahamandir, inquest report No.20/2013 was registered under Section 174 Cr.P.C.. The dead body of Hanuman Ram was subjected to postmortem through a Medical Board constituted at the MGH, Jodhpur which issued postmortem report (Ex.P/8) opining that the cause of death of Shri Hanuman Ram was hanging. Observations made by the Board regarding the ligature mark are noted herein below for the sake of future references:

"Ligature mark- Present on neck between chin and thyroid cartilage of size 34x3 cms. Light coloured running upward obliquely placed behind ears. A gap of 4 cms. (knot) present on the right side of neck, 4.5 cms. away from the right ear.

On dissection, the underlying skin is pale and surrounding tissues are parchment like appearance."

Visceras were preserved for being tested through the Forensic Sciences Laboratory.

(Emphasis Supplied).

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5. Five days later i.e. on 30.08.2013, Shri Padma Ram (PW-1) submitted another report (Ex.P/2) to the SHO Police Station Mahamandir alleging inter alia that his brother had, as a matter of fact, been murdered. He was forced to sign the report (Ex.P/1). The dead body of Hanuman Ram was handed over to him and he alongwith the two minor children of Hanuman Ram namely Mst. 'P' and Master 'R' proceeded to the Village Kukunda for performing the last rites and rituals. Hanuman Ram's wife Ladu Devi faked illness and got admitted in the Army Hospital on a false pretext and did not participate in the last rites of her husband. The two children told the informant that On 25.08.2013, their parents had gone to their room for sleeping in the night and were quarreling with each other. At about 3 O' Clock, Ladu Devi cried out loudly on which, both the children went towards the room of their parents which was bolted from inside. On insistence of the children, Ladu Devi opened the door and the children saw their father hanging from the ceiling fan with the aid of a bed-sheet. His knees were touching the ground. The children called the Guard who instructed that the body should be removed only after the arrival of the Military Police. However, Ladu Devi cut down the body and tried to destroy the evidence. When the Military Police reached there, Ladu Devi told them that Hanuman Ram had committed suicide.

It was further alleged that Hanuman Ram was working on the post of Nayak in the Army and was posted at Pooh, Himachal Pradesh. He had come to Jodhpur on 15.08.2013 for giving statement in a criminal case registered against Manaram. Hanuman Ram went to the Court on 21.08.2013 where, Manaram threatened him to change the statement on which, Hanuman Ram lodged a report at the Police Station Udaimandir. The children told (5 of 23) [CRLA-1041/2015] him that they had started living in the Army Quarters, Jodhpur from 01.08.2013. Manaram would often scale the wall of the quarter and come inside the quarter. He and Ladu Devi would consume liquor and sleep together.

6. On 24.08.2013, Ladu Devi joined company of Manaram and called Hanuman Ram. The children also told him that Manaram and Ladu Devi used to save their conversation in the memory card of a phone which was destroyed. Ladu Devi and Manaram were indulged in an extra-marital affair and she would fritter away the money of Hanuman Ram after he proceeded to his posting place. The army personnel had written a letter to the District Collector on 10.06.2012 with a request to take action against Manaram and Ladu Devi who had eloped together. She filed a false case of domestic violence against Hanuman Ram and other family members in an attempt to extort money. Later on, Ladu Devi had filed a case of rape against Manaram. Looking to the future of the children, Hanuman Ram got his children admitted into the Army School at Jaipur where, they were living with Ladu Devi. In August, 2012, Manaram got released on bail and went to Jaipur. There, he and Ladu Devi sold all the ornaments and valuables of Shri Hanuman Ram and splurged the money. Ladu Devi

again eloped with Manaram and started living a wayward life of debauchery. She filed false cases against her husband. Ladu Devi's maternal family members took her to their house. She also filed a case of rape against Manaram at Jaipur. Feeling that Ladu Devi could not change her statement in rape case as long as Hanuman Ram was alive, she and Manaram conspired with each other and (6 of 23) [CRLA-1041/2015] killed Hanuman Ram on the night intervening 24/25.08.2013. Ladu Devi tried to give the murder a shape of suicide.

7. On the basis of this report, FIR No.453/2013 (Ex.P/17) came to be registered at the Police Station Mahamandir for the offence punishable under Section 302 IPC and investigation was commenced. It is relevant to mention here that in this highly belated report which Shri Padma Ram filed after having consulted the two children of the deceased, there is a total omission of any kind of allegation that Manaram had come to the quarter of the deceased on the night of the incident.

Be that as it may. The accused appellant and Smt. Ladu Devi were arrested and after concluding investigation, a charge-sheet came to be filed against them in the court concerned on 27.11.2013. The case was committed to the Court of the Sessions Judge, Jodhpur Metropolitan from where, it was transferred to the court of the Additional Sessions Judge, No.2, Jodhpur Metropolitan for trial. The trial court framed charge against the accused appellant and the co-accused Ladu Devi for the offence punishable under Section 302 IPC. They pleaded not guilty and claimed trial. The prosecution examined 18 witnesses and exhibited 24 documents to prove its case. Upon being questioned under Section 313 Cr.P.C., the accused denied the prosecution allegations and claimed to have been falsely implicated. Manaram took a specific plea that numerous cases were going on between him and the complainant party relating to properties in the village and thus, he had been falsely implicated in this case. The accused Ladu Devi took a specific plea that a totally false case of murder had been registered whereas her husband had committed suicide by (7 of 23) [CRLA-1041/2015] hanging himself. The informant Padma Ram conspired with the police officials and got registered a false case against her. The children were pressurised and tutored to give false statements against her. She had filed a case of domestic violence against her husband and other family members who implicated her falsely in this case so that she could be deprived of her lawful share in the family property and also because the relatives of Hanuman Ram wanted to usurp his pensionary benefits. No evidence was led in defence.

After hearing the arguments advanced by the defence counsel and the learned Public Prosecutor and appreciating the evidence available on record, the learned trial court proceeded to convict and sentence the appellant and the co-convict Ladu Devi for the offence punishable under Section 302 IPC and sentenced both of them to Life Imprisonment and fine. Appellant Manaram has filed Appeal No.1041/2015 whereas, Ladu Devi preferred D.B. Criminal Appeal No.949/2015 for challenging the impugned judgment. She was granted bail by this Court. However she expired on 29.04.2021 on which, the appeal preferred by her stands abated vide order dated 19.05.2022.

8. Shri Vinod Kumar Sharma, learned counsel representing the appellant, advanced the following arguments for assailing the impugned Judgment and craving acquittal for the appellant:-

(i) that there is no allegation whatsoever in the first report (Ex.P/1) lodged on 25.08.2013, regarding any foul play in the death of Shri Hanuman Ram.

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(ii) that the written report (Ex.P/2) came to be filed after gross delay of five days i.e. on 30.08.2013 for which no plausible explanation is forthcoming. The report (Ex.P/2) was filed by Padma Ram after having consulted the star prosecution witnesses Mst. 'P' and Master 'R' and significantly enough, even in this highly belated report, there is no allegation whatsoever that the appellant came to the house of the deceased on the fateful night or that he was in any manner directly responsible for the alleged murder of Hanuman Ram.

(iii) that as per the evidence of the Security Guard Harendra Kumar Rai (PW-11) and Hawaldar Anil Kumar Rai (PW-12), the Lancer Line Campus where the Quarter No.252/8 was located, was encumbered by a boundary wall and no outsider entered the campus or the quarter on the fateful night. Thus, Shri Sharma urged that the highly belated attempt of the prosecution to portray the appellant as being the murderer is absolutely flimsy and farfetched.

(iv) that the evidence of the child witnesses Mst. 'P' (PW-4) and Master 'R' (PW-5) is highly contradictory. Mst. 'P' stated in her examination-in-chief that Manaram came to their house and went into the room of her father and soon thereafter, she saw her mother and Manaram hanging her father. However, the child was confronted with the police statement (Ex.D/2) wherein, there is total omission of the fact that Manaram came inside their house on the night of the incident. Shri Sharma also drew the Court's attention to the statement of the other child witness Master 'R' who alleged that he and his sister were sleeping on the fateful (9 of 23) [CRLA-1041/2015] night i.e. 24.08.2013. Manaram came to their house at about 12.00-12.30 AM. He did not think much of Manaram's visit because it was a routine happening and went back to sleep. At about 3 O' Clock in the night, his mother shouted on which, they went towards the room and pushed the door on which, they saw their father hanging with a bed-sheet. However, the boy did not allege that Manaram was present in the room. He further submitted that both the children were living with their grandparents after the incident. They admitted that their grandparents had a grave discord with their mother. Thus, as per Shri Sharma, both the children were instigated and tutored to give false evidence against the appellant herein. Shri Sharma urged that the statement of Master 'R' is totally concocted and is contradicted by the version as stated by Mst. 'P' (PW-4) and hence, the evidence of both these witnesses deserve to be discarded.

(v) that the evidence of Dr. Kamlesh Purohit, the Medical Jurist (PW-6), Member of the Medical Board which carried out the postmortem on the dead body of Hanuman Ram, establishes beyond all manner of doubt that cause of death of Hanuman Ram was ante-mortem hanging. The Board noted

that there was no mark of injury on the dead body. There were no signs of mechanical force being applied on the neck of the deceased. Shri Sharma urged that finding recorded by the trial court in the impugned judgment that the percentage of Ethyl Alcohol (92.92 mg. per 100 ml.) in the blood of the deceased, gave rise to an irrefutable inference that he would not be in a position to hang himself, is based on conjectures and surmises. He submitted that (10 of 23) [CRLA-1041/2015] the prosecution did not give any suggestion to the Medical Jurist that looking to the percentage of liquor in the blood of the deceased, it would not be possible for him to hang himself. He drew the Court's attention to the cross-examination conducted from the doctor wherein, he admitted that it was wrong to suggest that the percentage of alcohol found in the blood of the victim was sufficient to intoxicate him. The doctor, rather stated that with this quantity of alcohol, the person could at best be in a state of euphoria. He thus urged that as the prosecution has given no suggestion to the doctor regarding the death of Hanuman Ram being homicidal, the inference drawn by the trial court that Hanuman Ram was strangled and killed, is absolutely baseless.

On these submissions, Shri Sharma implored the Court to accept the appeal, set aside the impugned judgment and acquit the accused appellant from the offence under Section 302 IPC.

9. Learned Public Prosecutor, on the other hand, vehemently and fervently opposed the submissions advanced by Shri Sharma and urged that the two children of the Hanuman Ram and Ladu Devi have given categoric evidence that the appellant herein came to their house on the night of the incident and that he and their mother Ladu Devi were responsible for the murder of their father. The learned Public Prosecutor further submitted that the conclusion given by the Medical Board in the postmortem report (Ex.P/8) that cause of death of Hanuman Ram was hanging would not ipso facto, dissuade the prosecution from independently proving that the Shri Hanuman Ram was murdered. He urged that the evidence of the eye-witnesses, coupled with the circumstance that co-accused Ladu Devi and appellant herein were involved in a (11 of 23) [CRLA-1041/2015] long standing extra-marital affair, gives rise to a clear inference that Hanuman Ram was first made to consume excessive liquor and then he was forcibly strung from the ceiling fan so as to give the incident an appearance of suicidal hanging. He contended that the finding recorded by the trial court that as 92.92 mg. per 100 ml. of Ethyl Alcohol was found in the blood of the deceased, he would not be in a position to hang himself, is absolutely justified as the same is based on forensic opinion. He also submitted that the evidence of the Guard Harendra Kumar Rai (PW-11) and the Hawaldar Anil Kumar Rai (PW-12) cannot impeach the evidence of the child witnesses who have given convincing evidence against their own mother and the appellant and that their testimony deserves to be given credence as compared to the testimony of the Guard Harendra Kumar Rai (PW-11) and the Hawaldar Anil Kumar Rai (PW-12). On these grounds, learned Public Prosecutor implored the Court to dismiss the appeal and affirm the impugned judgment.

10. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned Judgment and, have minutely shifted through the evidence available on record.

11. The evidence, which needs to be discussed at the forefront, is the medical evidence led by the prosecution to prove the cause of death of Shri Hanuman Ram. Dr. Kamlesh Purohit (PW-6) being a

Member of the Medical Board which carried out autopsy upon the dead body of Shri Hanuman Ram, stated on oath that the ligature mark noticed on the neck of the deceased was, upon (12 of 23) [CRLA-1041/2015] opening, pale coloured and the tissues were parchment like. Cause of death of the deceased was hanging as per the opinion of the Medical Board. The deceased had consumed Ethyl Alcohol before his death. There was a possibility of hanging even if the feet of the deceased were touching the ground and the knees were bent. The doctor denied the suggestion that the quantity of Ethyl Alcohol found in the Viscera Report (Ex.P/9) i.e. 92.92 mg. per 100 mg would be sufficient to intoxicate the deceased. The doctor opined that this percentage of alcohol could lead to euphoria. The dictionary meaning of Euphoria is; "a feeling or state of intense excitement and happiness".

The doctor admitted that if a person was killed by different means and then hanged, the findings of the ligature mark would be different. In this regard, it would be fruitful to refer to the celebrated text 'Modi's Medical Jurisprudence & Toxicology' wherein, the renowned author made a comparative analysis of the postmortem findings in cases of homicidal strangulation and suicidal hanging:

Hanging	Strangulation
1. Mostly suicidal.	1. Mostly homicidal.
2. Face- Usually pale and petechiae rare.	2. Face- Congested, livid and marked with petechiae.
3. Saliva-Dribbling out of the mouth down on the chin and chest	3. Saliva-No such dribbling
4. Neck-Stretched and elongated in fresh bodies.	4. Neck-Not so.
5. External signs of asphyxia, usually not well marked.	5. External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect.
6. Bleeding from the nose, mouth and	6. Bleeding from the nose, mouth and ears very rare. ears may be found
7. Ligature mark-Oblique, non-transverse	7. Ligature mark- Horizontal or continuous placed high up in the neck, low down in the neck below the larynx, the base of the groove or furrow being hard, yellow or reddish. and parchment-like.
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8. Abrasions and ecchymoses round the edges of the ligature mark, rare.	8. Abrasions and ecchymoses round about the edges of the mark, common.
9. Subcutaneous tissues under the mark- Ecchymosed.	9. Subcutaneous tissues under the mark- White, hard and glistening.
10. Injury to the muscles of the neck-	10. Injury to the muscles of the neck-

Rare.	Common.
11. Carotid arteries, internal coats	11. Carotid arteries, internal coat

ruptured in violent cases of a long ordinarily ruptured. drop.

12. Fracture of the larynx and trachea- Very rare and that too in trachea- Often found also hyoid judicial hanging. bone.

13. Fracture-dislocation of the cervical vertebrae- Common in judicial vertebrae-Rare. hanging.

14. Scratches, abrasions and bruises on the face, neck and other parts on the face, neck and other parts of the body- Usually not present. of the body- Usually present.

15. No evidence of sexual assault. 15. Sometimes evidence of sexual assault.

16. Emphysematous bullae on the surface of the lungs- Not present. surface of the lungs- May be present.

Manifestly, on analysing the findings of the Board regarding the ligature mark with reference to the opinion of the expert author on forensic medicine, there is no doubt in the mind of the Court that death of Shri Hanuman Ram was unquestionably caused by suicidal hanging and there is no possibility of his death being homicidal.

12. Now, we proceed to appreciate the evidence of the material prosecution witnesses; PW-1 Padma Ram (brother of the deceased), PW-4 Mst. 'P' (daughter of the deceased), PW-5 Master 'R' (son of the deceased), PW-11 Harendra Kumar Rai (the Guard) and PW-12 Anil Kumar Rai (Hawaldar).

13. PW-1 Padma Ram made inflated allegations of illicit relations between the accused Ladu Devi (since deceased) and the (14 of 23) [CRLA-1041/2015] appellant herein. He also alleged that Ladu Devi had filed a case of rape against Manaram and a case of domestic violence against her husband Hanuman Ram (the deceased) and other family members.

The witness further alleged that initially, after the death of Hanuman Ram, he was misled into signing the report (Ex.P/1). However, this allegation is totally cooked up because there was no one at the police station who could mislead or compel Shri Padma Ram to lodge a report with incorrect facts. The witness stated that after the report was filed and the dead body was handed over for last rites, he and the children of the deceased went to the village where the dead body was cremated. He got busy in the social rituals. The children then divulged that on the fateful day, Ladu Devi was in the company of Manaram who threatened Hanuman Ram with dire consequences on phone. Ladu Devi returned home at about 5 O' Clock in the evening of 24.08.2013. She and Hanuman Ram quarreled with each other. Then, all the family members went to sleep. The children woke up in the night at about 12.30 AM and saw Manaram in their house. However, they thought that this was a routine event and thus, they went back to sleep. In the morning at about 3 O' Clock, Ladu Devi

shouted on which, the children went to the room and saw their father hanging from the ceiling fan. The Guard was called who instructed that the body should not be disturbed. However, Ladu Devi cut the bed- sheet and brought down the body.

The witness admitted that he submitted the report (Ex.P/1) at the Police Station Mahamandir and also signed the inquest documents viz. Fard Surathaal Lash (Ex.P/3), Panchnama Lash (Ex.P/4) and Fard Supurdgi Lash (Ex.P/5). He also alleged that (15 of 23) [CRLA-1041/2015] Manaram and Ladu Devi were indulged in an extra-marital affair from three years before the incident and a case in this regard was registered against Manaram at the Police Station Dangiyawas. Another case was registered against Manaram at the Police Station Jhotwara, Jaipur. His brother Hanuman Ram had come to Jodhpur for giving evidence in connection with Dangiyawas case. Manaram threatened him with dire consequences on which, a complaint was lodged against him at the Police Station Udaimandir. However, it may be stated here that not a single document pertaining to any of these cases was presented by the prosecution during the course of investigation or trial. The witness proved the written report (Ex.P/2) on the basis whereof, the FIR came to be registered.

In cross-examination, the witness was extensively confronted with the omissions and contradictions vis-a-vis the two reports and his previous police statement. He admitted that the children Master 'R' and Mst. 'P' told him about the incident with Hanuman Ram on 26.08.2013. Both the children stayed with their grandparents in the village after the death of Hanuman Ram. The children had shared all details of the incident on 26.08.2013 but he did not lodge the report immediately thereafter because he was busy in the customary rituals. He admitted that his mother had filed a case against Hanuman Ram's wife Ladu Devi (the co- accused). For the sake of repetition, it may be mentioned here that in the written report (Ex.P/2), the witness did not mention that the children told him that they had seen Manaram entering their house in the night. The relevant part of the written report (Ex.P/2) is reproduced herein below for the sake of ready reference:

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"... nksuksa cPpkSa us eq>s crk;k fd jkf= dks eEeh ikik ,d dejs esa

lksus ds fy;s x;s Fks vkSj vkil esa >xM+ Hkh jgs FksA fnukWd 25-08- 2013 dks lqcg (jfk+= tSlk) 3 cts eEeh yknwnsoh tksj tksj ls vkokts nh rc nksuksa cPps eEeh ikik ds dejs ds ikl x;s Fks eEeh us dejk vanj ls can dj j[kk Fkk cPpkSa ds dgus ij yknwnsoh us vanj ls dejk [kksyk rc cPpks dks fn[kk;k fd cSM'khV ls Qkalh dj ia[ks ls yVdk;k gqvk Fkk] cPpkSa us crk;k fd ikik ds ?kqVus tehu rd gq, Fks iSj eqM+s gq, Fks fQj cPpkSa us xkMZ vady dks cqyk;kA...." At the concluding part of the report, the witness alleged that Manaram and Ladu Devi conspired with each other and as a consequence, Hanuman Ram was killed and Ladu Devi tried to give the incident a shape of suicide. The significant omission in this report regarding the factum of the appellant having come to the house of Hanuman Ram on the fateful night, goes to the root of the matter and completely discredits the prosecution case.

It may be reiterated that the FIR came to be lodged after 5 days of the incident whereas the complainant admitted that the children had given him the complete details of the incident as seen

by them, on 26.08.2013 itself. Thus, without prejudice to the fact that the FIR is highly belated, if at all the children had seen Manaram entering their house on the fateful night then, this fact was bound to be incorporated in the written report (Ex.P/2). This omission completely destroys the substratum of the prosecution case regarding involvement of Manaram in the incident.

14. PW-4 Mst. 'P' (daughter of the deceased Hanuman Ram and the co-accused Ladu Devi) made the following statement regarding the incident:

"...mlds ckn 11 cts ds vkl ikl ge lc lks x;sA exj eq>s uhan ughas vkbZA blds ckn esa djhc ,d ?k.Vs ds ckn esa eSus ns[kk eEeh gekjs :e esa vkbZ vkSj :e dh ykbZV pkyw dhA vkSj ?kj dk Main (17 of 23) [CRLA-1041/2015] Gate [kksykA rc ekukjke vk;k Fkk vkSj oks vanj ikik ds :e esa pyk x;kA exj ,d ?k.Vs rd tc ekukjke okil ckgj ugha vk;k rks esa eEeh ikik ds :e ds lkeus xbZ o eSus ns[kk fd eEeh o ekukjke ikik dks Qkalh ij yVdk jgs Fks ysfdu ;s ns[kdj eS Mj xbZ vkSj vius :e esa vkdj lks xbZA djhc vk/ks ?k.Vs ds ckn esa ekukjke okil pyk x;kA rhu cts eEeh us ge nksuksa dks vkokt yxkbZ] rc ge yksx ikik ds :e es x;sA geus ns[kk fd dejs dh Light pkyw Fkh vkSj ikik dks Qkalh ds Qans ij yVdk j[kk Fkka...."

In cross-examination, the witness was confronted with her police statement (Ex.D/2). She admitted having given such statement to the police. It may be mentioned here that in this statement, it is not mentioned that Mst. 'P' saw Manaram coming into the house on the fateful night. At caption portion A to B of the statement, she stated that at about 3 O' Clock in the morning, her mother called out to wake her and her brother on which, they went to the room of their parents and saw their father hanging with a bed-sheet. She also stated that her brother told her that in the night at about 12.00-12.30 AM, he had seen Manaram entering their house. Manifestly, when the girl was examined by the police, she did not allege that she had seen Manaram entering their house and thus, the fact as stated by her in the sworn testimony is a sheer improvement which deserves to be discarded.

15. PW-5 Master R', being the son of Shri Hanuman Ram and the co-accused Ladu Devi, stated that Manaram came to their house on the night of 24.08.2013 at about 12.00-12.30 AM. He saw Manaram and went back to sleep. At about 3 O' Clock, his mother shouted and called them out. They went to the room and saw their father hanging with a bed sheet. In cross-examination, the (18 of 23) [CRLA-1041/2015] witness admitted that he was sleeping in his room at the time of the incident. The police recorded his statement (Ex.D/3) wherein, he did not state that he woke up because of the noise of the door when Manaram entered their house. He admitted that his uncle had come to the court with him. In further cross-examination, the witness admitted that there were two gates for entering into the Military Quarter Colony. CMP guards were posted on both the gates. He was present in the hospital when the police came after the death of his father. No one asked him as to how his father had died and thus, he did not tell the police anything in this regard. He was at the Military Hospital after the incident and from there, he called his uncle Padma Ram on phone and told him of the fate which had befallen his father. He denied the suggestion that he had told his uncle that his father had committed suicide.

Looking to the gross delay of 5 days in the lodging of the report (Ex.P/2) and the grave contradictions inter se in the statements of PW-1 Padma Ram, PW-4 Mst. 'P' and PW-5 Master 'R', it is manifest that the children were tutored to give evidence so as to implicate their mother and the appellant in this case. The theory put-forth in the statements of the two children (supra) that the accused appellant came into their house in the night at about 12.00-12.30 AM, is a sheer exaggeration and is falsified when we consider the statements of the Guard Harendra Kumar Rai (PW-

11) and the Hawaldar Anil Kumar Rai (PW-12).

16. Shri Harendra Kumar Rai stated on oath that he was on guard duty from 08.00-10.00 in the night and 02.00-04.00 in the morning. On the fateful night, at about 03.15 AM, when he was on the duty, a boy approached him from the direction of the (19 of 23) [CRLA-1041/2015] Family Quarters and told him that his father had hanged himself in the quarter.

In cross-examination, the witness admitted that the Lancer Line Residential Colony is surrounded by a permanent boundary wall. He was present on the guard duty from about 12 O' Clock in the night. He did not see anyone entering the house where the incident took place.

17. PW-12 Anil Kumar Rai stated that on 24.08.2013, he was continuously on night duty as Guard Commander. A permanent boundary wall surrounds the colony. He did not hear any commotion from the house where the incident took place. He did not see anyone going towards the Quarter No.252/8 on the fateful night.

Apparently, as the residential colony is of the Armed Forces and as the same is encompassed by a boundary wall with round the clock guards being posted on the two gates, unnoticed entry of a private individual into the colony in the night time, was absolutely impossible.

18. After critical analysis of the evidence of the witnesses as discussed above, the scenario boils down to the following conclusions:

(i) that the report (Ex.P/1) lodged by Padma Ram at the Police Station Mahamandir on 25.08.2013 at about 08.40 AM, wherein, he alleged that his brother had ended his life by hanging, gives out the correct version of the incident. The child witness Master 'R' admitted in his statement that he called his uncle from the Military (20 of 23) [CRLA-1041/2015] Hospital and told him as to what had happened to his father. In this background, it can be presumed that the true information of the incident must have been conversed by the boy to Shri Padma Ram who incorporated the same in the report (Ex.P/1);

(ii) the boy Mater 'R' (PW-5) approached the Guard Harendra Kumar Rai (PW-11) at 03.15 AM and gave him an information that his father had hanged himself. If at all there was any truth in the flimsy prosecution theory, there was no reason as to why the boy would not disclose to the Guard that his father had been murdered.

(iii) the Military Police arrived at the quarter and the children were free to divulge the true sets of facts as known to them but they did not make any attempt to disclose that their father had been murdered.

(iv) that the first informant, Padma Ram (PW-1) lodged the highly belated written report (Ex.P/2) dated 30.08.2013 after admittedly having received complete details of the incident from the two children who were living with their grandparents after the death of Shri Hanuman Ram. However, even in this report, there is no allegation that Manaram had come to the house of the deceased on the fateful night and was responsible for his death. Thus, glaring omission makes the evidence of Padma Ram (PW-1), Mst.

'P' (PW-4) and Master 'R' (PW-5) completely unworthy of credence.

Reference in this regard may be had to the Supreme Court Judgment in the case of Ram Kumar Pandey vs. The State of (21 of 23) [CRLA-1041/2015] Madhya Pradesh reported in AIR 1975 SC 1026 wherein it was observed:

"8. The above mentioned First Information Report was lodged at Police Station Ganj on 23-3-1970 at 9.15 p.m. The time of this incident is stated to be 5 p.m. The only person mentioned as an eye witness to the murder of Harbinder Singh is Joginder Singh. The two daughters Taranjit Kaur, PW 2, and Amarjit Kaur, PW 6, are mentioned in the F.I.R. only as persons who saw the wrapping of the chadar on the wound of Harbinder Singh, What is most significant is that it is nowhere mentioned in the F.I.R. that the appellant had stabbed Harbinder Singh at all. It seems inconceivable that by 9.15 p.m. it would not be known to Uttam Singh, the father of Harbinder Singh, that the appellant had inflicted one of the two stab wounds on the body of Harbinder Singh.

9. No doubt, an F.I.R. is a previous statement which can, strictly speaking, be only used to corroborate or contradict the maker of it. But, in this case, it had been made by the father of the murdered boy to whom all the important facts of the occurrence, so far as they were known up to 9.15 p.m. on 23-3-1970, were bound to have been communicated. If his daughters had seen the appellant inflicting a blow on Harbinder Singh, the father would certainly have mentioned it in the F.I.R. We think that omissions of such important facts, affecting the probabilities of the case, are relevant under Section 11 of the Evidence Act in judging the veracity of the prosecution case.

10. Even Joginder Singh, PW 8, was not an eye witness of the occurrence. He merely proves an alleged dying declaration. He stated that Harbinder Singh (described by his pet name as "Pappi") rushed out of his house by opening its door, and held his hand on his chest with blood flowing down from it. He deposed that, when he asked Pappi what had happened, Pappi had stated that Suresh and Pandey had injured him. It is

clear from the F.I.R. that Joginder Singh had met Uttam Singh before the F.I.R. was made. Uttam Singh did not mention there that any dying declaration, indicating that the appellant had also injured Harbinder Singh, was made by Harbinder Singh. The omission to mention any injury inflicted on Harbinder Singh by the appellant in the F.I.R. seems very significant in the circumstances of this case. Indeed, according to the version in the F.I.R., Joginder Singh, who was in the lane, is said to have arrived while Harbinder Singh was being injured. Therefore, if this was correct, the two injuries on (22 of 23) [CRLA-1041/2015] Harbinder Singh must also have been inflicted in the lane outside.

(Emphasis supplied)"

(v) that the evidence of the Military Guard Harendra Kumar Rai (PW-11) and Hawaldar Anil Kumar Rai (PW-12) clearly establishes that the Army Colony, where the deceased Hanuman Ram was living with his family, was encompassed by a permanent boundary wall and guards were deployed round the clock on the two entry gates. Thus, there was no possibility of any private person having entered the colony during the night time without alarming the guards.

(vi) Evidence of the Medical Jurist Dr. Kamlesh Purohit (PW-6) and the findings of the postmortem report (Ex.P/8) regarding the ligature mark demolishes the prosecution theory regarding Shri Hanuman Ram having been murdered. The doctor gave categorical testimony stating that the cause of death of Shri Hanuman Ram was hanging. The doctor also affirmed that the percentage of Ethyl Alcohol found in his blood would result in Euphoria which means an excitable state. Thus, in all probability, Shri Hanuman Ram seems to have committed suicide acting under the influence of liquor. The finding recorded by the learned trial court in the impugned Judgment that the deceased was made to consume liquor and was then forcibly hanged, is totally conjectural and unsustainable on the face of the record. The charge of murder held proved by the trial court against the accused cannot be sustained in light of the categorical expert evidence of Dr. Kamlesh Purohit (PW-6).

(23 of 23) [CRLA-1041/2015] Findings recorded in the impugned Judgment are perverse and based sheerly on conjectures and surmises. The Presiding Officer seems to have taken a flight of fancy while recording guilt of the accused as above.

19. As an upshot of the above discussion, the appeal deserves to be accepted. The impugned Judgment dated 11.09.2015 passed by the learned Additional Sessions Judge No.2, Jodhpur Metropolitan in Sessions Case No.19/2015, is hereby quashed and set aside. The appellant is acquitted of the charge. He is in custody. He shall be released from prison forthwith if not wanted in any other case.

The appeal is allowed in the above terms.

20. However, keeping in view the provisions of Section 437-A Cr.P.C., the appellant is directed to furnish a personal bond in the sum of Rs.40,000/- and a surety bond in the like amount before the learned trial court, which shall be effective for a period of six months to the effect that in the event of

filing of a Special Leave Petition against the present judgment on receipt of notice thereof, the appellant shall appear before the Supreme Court.

21. Record be returned to the trial court forthwith. (VINOD KUMAR BHARWANI),J (SANDEEP MEHTA),J Tikam/Devesh/-

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