

Hari Shanker Vs. State of U.P.

Hari Shanker Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/489478

Court : Allahabad

Decided On : May-29-1998

Reported in : 1999CriLJ2393

Judge : D.K. Trivedi and ;I.P. Vasishth, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 323; Code of Criminal Procedure (CrPC) - Sections 293 and 313

Appeal No. : Crl. Appeal No. 925 of 1985

Appellant : Hari Shanker

Respondent : State of U.P.

Advocate for Def. : G.A.

Advocate for Pet/Ap. : Party-in-Person

Disposition : Appeal allowed

Judgement :

I.P. Vasishth, J.

1. The instant appeal is directed against the judgment of conviction and its corresponding order of sentence dated 19-6-1985 passed by Sri J. B. Singh, 11 Additional Sessions Judge, Pratapgarh requiring the appellant to undergo

imprisonment for life for an offence Under Section 302 and six months rigorous imprisonment for an offence Under Section 323 of the Indian Penal Code.

2. To trace a short history of the case, the appellant was prosecuted by the police of police station, Jethwara, district Pratapgarh on the allegation that on 2-9-1984 sometimes between 6 and 7 A.M. (morning) in a fit of insanity, he fatally assaulted his wife with a Kulhari in their residential house at village Tola Sarai Indrawat; the report was lodged at around 10.30 a.m. on the same day by his brother Dharam Raj P.W. 2 with the Moharrir Head Constable, Ravi Shanker Pandey P.W. 8. The intervening distance between the place of occurrence and the police station was stated to be about five kilometres. Immediately after registration of the case, P.W. 9 Ganesh Shukla, the then S.I. In-charge of the police station rushed to the place of the accused and found that he was sitting inside the house on bolting the door from the inner side; simultaneously the door was also found bolted from outside. In the presence of a large crowd including P.W. 7 Mahadeo and one Raj Ram, the Investigating Officer arrested the accused who was found sitting by the side of the dead body with a bloodstained Tilak on his forehead and reading 'Hanuman Chalisa'. Incense sticks were! burning there and some Pooja articles were lying nearby. The Investigating Officer also recovered-, a bloodstained Kulhari and Gandasa besides some blood-stained earth from the place of occurrence.

3. The investigation revealed that on the day of occurrence, the accused and his wife were last seen together by their neighbours Smt. Anara Devi P.W. 3 and Smt. Ram Pati P.W. 6. Shortly thereafter P.W. 1 Baldeo @ Bachai and P.W. 4 Smt. Bhagwani Devi, the parents of the accused had also seen him quarrelling with his wife Smt. Savitri Devi and when she was under assault P.W. 5 Mathura Teli had tried to intervene with a view to rescue her, but in his turn he was also assaulted and injured by the accused appellant.

4. On completion of the spot proceedings including preparation of the site-plan Ext. Ka-17 and the inquest proceedings, the Investigating Officer despatched the deadbody to the mortuary where it was subjected to autopsy by Dr. P. N. Shukla on the next day. Similarly, medical examination of the injured witness Mathura Teli was also arranged. On completion of investigation, the accused was looked for

trial for the offences punishable Under Sections 302 and 323 of the Indian Penal Code. In due course of time, formal charges were framed against him by the learned Additional Sessions Judge for the offences punishable Under Sections 302 and 323 of the Indian Penal Code to which he pleaded not guilty and claimed to be tried.

5. In support of its case, the prosecution examined nine witnesses in all including the above referred material characters. The post mortem report prepared by Dr. T. N. Shukla was tendered in evidence under Section 293, Cr.P.C. after being admitted by the learned defence counsel, but it appears that Dr. Tewari who had examined P.W. 5 Mathura Teli was not produced before the Court. In his statement under Section 313, Cr.P.C. denying the incriminating allegations, the accused pleaded false implication and explained that he was picked up by the police from Derwa market. He, however, declined the opportunity to adduce any defence evidence.

6. On conclusion of trial, the learned Additional Sessions Judge felt satisfied with the pith and substance of the prosecution case and thus on holding the appellant guilty passed the impugned judgment of conviction and order of sentence, feeling aggrieved against which the latter approached this Court by way of a formal appeal.

7. On a careful consideration of the entire available material and hearing the parties, we are not inclined to sustain the verdict returned by the learned Additional Sessions Judge because he appears to have proceeded on certain loaded propositions originating from the realm of surmises and conjectures. To be precise, there is not even a whisper about the possible motive for the accused to eliminate his wife; no allegation of family discord suggestive of strained relations between the parties was ever propagated. Neither of the neighbouring witnesses Smt. Anara Devi P.W. 3 and Smt. Ram Pati P.W. 6 allege having seen the accused and the deceased together on the fateful morning. They even did not suggest that the couple was the only occupant of the house. Their statements are rather reflected in the depositions of appellant's parents Baldeo P.W. 1 and Smt. Bagwani Devi P.W. 4 that the entire family was living together. Nobody saw the

accused quarrelling or fighting with the deceased and it goes without saying that there is no eyewitness account whatsoever. All the public witnesses including the parents of the appellant as well as the informant turned hostile to the prosecution. With the permission of the Court, they were cross-examined by the learned prosecutor, but no worthwhile material could be extracted from them to indicate any wilful or deliberate attempt on their part to conceal the truth. Their statements are rather indicative of the death under some mysterious circumstances by an unidentifiable character.

8. The best piece of evidence which could be adduced by the prosecution related to the proposition of the appellant's arrest from the place of occurrence, but that itself is not free from doubt because it is based on the conception that in the process of assaulting his wife, the appellant also caused injuries to PW. 5 Mathura Teli when the latter tried to intervene, but Mathura Teli whose statement was allowed to go unchallenged by the learned prosecutor as well, preferred to keep quiet about the alleged assault on the deceased by the appellant. His testimony was allowed to remain confined only to the extent of personal assault on him by the appellant and that too at his own house (house belonging to the witness). From the statement of the Investigating Officer particularly with regard to the site plan Ext. Ka-17, it is abundantly clear that the house of the appellant where the occurrence is alleged to have taken place and the house of the witness were situated at a considerable distance of at least one furlong. If the deposition of Mathura Teli were to be accepted on its face value, it would lead to some grave absurdities inasmuch as according to the prosecution story the deceased was assaulted by the appellant at his own house sometime in the morning between 6 and 7 A.M. and Mathura Teli also received injuries in the same incident during the intervention, thereafter the accused secured himself into his own house by holding it from inside and the villagers in their turn bolted that house from outside and sent the informant Dharam Raj P.W. 2 to the police station to lodge a report. Dharam Raj later on returned with the police and that was how that the Investigating Officer Ganesh Shukla arrested the accused, but Mathura Teli demolished such story by saying that he was assaulted in his own house (Mathura's house) by the appellant without any rhyme or reason between 8.30-8.45 a.m. when he was sleeping there with open doors and that after assaulting him, the appellant ran away from there. If

it were so, then it remains to be explained as to how the appellant got himself released from his own house-confinement to slip out to the place of Mathura Teli and again returned to the same confinement so as to be available to the police for his arrest as propounded by them and it goes without saying that Mathura Teli has not assigned any reason whatsoever as to why he was assaulted by the appellant. To crown it all, according to Mathura Teli he was given kulhari blow by the accused from its sharp and cutting side of the blade whereas according to the medical report prepared by Dr. Tewari, he was found carrying only a blunt weapon wound represented by an abrasion.

9. There is another significant aspect of the case inasmuch as in the F.I.R. itself it was propagated that the appellant had committed the offence on account of insanity and during the course of investigation the Sub-Inspector Ganesh Shukla had also requested the Jailor to get the appellant examined from the Chief Medical Officer with regard to his mental condition, but the matter was left at that without any pursuance for no explicable reasons. Be that as it may, despite the factual improbability, the mere presence of the appellant by the side of his deceased wife, holding the Pooja, would not suffice to conclude his guilt, this apart he was found conducting Pooja which could not be an abnormal feature in somebody's endeavour to seek solace for the departed soul. In the case of *Akhilesh Hajam v. State of Bihar* 1995 SCC (Cri) 883, the trial Court as well as the High Court recorded the conviction of the appellant on the basis of the following circumstances which were held to be insufficient by the Apex Court, resulting in the reversal of the verdict.

(1) All the four deceased persons were alive on 10-10-1979 at 7.30 a.m. when the father of the appellant had left the house for another village.

(2) The four victims were found murdered at about 2.00 p.m. in the house in which the appellant also lived with his father and the victims.

(3) In between the period from 7.30 a.m. to 4.00 p.m. there was no alarm of theft or dacoity in the house and they had no enmity with any person which ruled out the possibility of the commission of the murder by any other person.

(4) The accused was found absconding from his house soon after the murder and was subsequently caught outside the village and brought at the door of the house at about 4 p.m.

(5) When the appellant was with his father and other witnesses, the Assistant Sub-Inspector of Police arrived and noticed that the appellant looked as if he was under the influence of some intoxication.

(6) Although four members of his family including his wife and daughter were murdered, the appellant did not go to see them and remained outside his house.

(7) On the disclosure statement made by the appellant the blood stained iron angle was recovered and seized at the instance of the appellant from the room of the house concealed beneath the fuel wood stored therein.

10. It may not be out of place to mention here that neither the blood stained earth allegedly recovered from the place of occurrence by the Investigating Officer nor the alleged weapons of offence i.e. Kulhari and Gandasa picked up by him from that very place at the time of arresting the appellant were sent to the Seriologist nor any plausible explanation was given for the omission to establish that they were stained with human blood.

11. Since in our case the circumstantial evidence does not have the requisite credible links to connect the appellant with the crime, therefore, for the reasons recorded above, the appeal must succeed. Accordingly we allow the appeal and on setting aside the impugned judgment of conviction and order of sentence rendered by the learned Additional Sessions Judge, Pratapgarh acquit the appellant. He be released forthwith if no longer wanted for any other case.