

**Harchanda Vs. State of Rajasthan**

**Harchanda Vs. State of Rajasthan**

**SooperKanoon Citation :** [sooperkanoon.com/769930](http://sooperkanoon.com/769930)

**Court :** Rajasthan

**Decided On :** Sep-15-2005

**Reported in :** 2006CriLJ949

**Judge :** Shiv Kumar Sharma and; J.R. Goyal, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 300, 302, 304, 307, 323 and 354; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Crl. Appeal No. 264 of 2000

**Appellant :** Harchanda

**Respondent :** State of Rajasthan

**Advocate for Def. :** M.L. Goyal, Public Prosecutor

**Advocate for Pet/Ap. :** Nasir Ali Naqvi and; Liyaqat Ali, Advs.

**Judgement :**

**J.R. Goyal, J.**

1. The appellant, along with two other accused, was placed under trial before the Additional Sessions Judge, Malpura (Tonk) in Sessions Case No. 17/ 1998. Learned Additional Sessions Judge, vide judgment dated 19-5-2000, while acquitting the appellant from the charge under Section 307, 307/34, IPC convicted

arid sentenced him for life imprisonment under Section 302, IPC along with fine of Rs. 1000/- in default to further undergo three months' imprisonment, and under Section 323, IPC, three months' imprisonment. Both the sentences were directed to run concurrently. The other two accused viz. Kishna and Satyanarayan alias Dinya, were acquitted from the charges under Sections 307, 307/34, 302, 302/34, IPC, but were hold guilty under Section 323, IPC and sentenced for the period already undergone by them under Section 323, IPC.

2. The prosecution case, as unfolded during trial, briefly, is that on 13-2-1998 'parcha bayan' (Exhibit P. 7) of P.W. 4 Smt. Ganga was recorded in the Govt. Hospital, Malpura to the effect that on 11-2-1998 at about 11 a.m. when she was in her fields, Satyanarayan alias Dinya son of Harchanda appellant, in her absence, misbehaved with her daughter Meera, but on his brother Kishna's intervention, Dinya ran away. On 12-2-1998, when her husband Amalya, who had gone to Bundi 4-5 days back, returned, Meera narrated the incident to him. Thereupon he went to the house of Harchanda to complaint about his son Dinya's conduct, but Amalya was beaten up there by Harchanda, Kishna and Dinya. On hearing hue and cry, she (Smt. Ganga) and her two sons Gordhan and Hanuman went there to rescue Amalya, but they were also subjected to severe beatings by them, namely Harchanda, Kishna and Dinya, as a result thereof Amalya, Gordhan and Hanuman fell unconscious. Thereafter, they were taken to the hospital for treatment.

3. On the said 'parcha bayan' FIR No. 18/1998 was registered under Sections 354, 323, 307/34, IPC at police station Malpura and investigation commenced. During investigsition, injured Hanuman succumbed to his injuries in the SMS Hospital, Jaipur on 13-2-1998 at 11-55 p.m. On completion of investigation charge-sheet was filed and in due course, the case came up for trial before the learned Additional Sessions Judge, Malpura. Charges under Sections 302, 307, 323 in alternate 302/34, 307/34, 323/34, IPC, were framed against the appellant and the two other accused, who denied the charges and claimed trial. The prosecution, in support of it's case examined as many as 18 witnesses. Statements under Section 313, Cr. P.C. were recorded, wherein the accused denied the prosecution case. Appellant Harchanda further explained that the complainant and her associate

have beaten him and his sons, and that they have falsely been implicated in this case. However, no evidence was produced in defence.

4. After hearing the final submissions, learned Judge convicted and sentenced them, as indicated hereinabove. However, Kishna and Satyanarayan alias Dinya, the other two accused, have not filed any appeal against their conviction under Section 323, IPC neither the State has filed any appeal against the order of their acquittal for the offence under Sections 302, 307, IPC.

5. We have heard the submissions and carefully gone through the evidence adduced at the trial.

According to Dr. D.K. Sharma, Medical Jurist, SMS Hospital, Jaipur, who conducted autopsy on the body of deceased Hanuman, haematoma was present on left fronto parieto temporal region and fracture of left parietal bone was also seen. The cause of death was due to Coma, which was the result of ante-mortem injuries to brain and skull of the deceased. Thus from the postmortem report and deposition of Dr. D.K. Sharma P.W. 17, it is clear that death of Hanuman was homicidal one.

6. So far involvement of appellant-Harchanda in this crime is concerned, the evidence of eye-witnesses namely Gordhan P.W. 1, Amalya P.W. 2, and Smt. Ganga P.W. 4, are cogent and trustworthy, which is also corroborated by the medical evidence. Therefore, the finding of the learned trial Court has not been assailed on merits before us.

7. The only contention of the counsel appearing for the appellant is that, according to the prosecution story Amalya-P.W. 2, went to the house of appellant-Harchanda to complain about the conduct of misbehaviour of Satyanarayan alias Dinya with Meera, where in the heat of passion quarrel started in between Amalya and Harchanda and on hearing hue and cry de-ceased-Hanuman along with his brother Gordhan and his mother Smt. Ganga, went on the spot and in the course of intervention Hanuman received one injury on his head. It is thus clear that the incident occurred all of a sudden and on the spur of the moment, and that the appellant did not take any undue advantage of the situation. He is alleged to cause

only one injury and did not strike any other blow. It was also contended that accused appellant-Harchanda and complainant party are close relatives and there was no bad blood between the deceased and the appellant. Accused appellant-Harchanda and the other accused, Kishna and Satyanarayan alias Dinya, also sustained injuries. Therefore, the case does not travel beyond Section 304, Part II of IPC, as there was no intention on the part of the appellant-Harchanda to kill Hanuman.

8. Learned Public Prosecutor, on the other hand, supported the impugned judgment and contended that appellant inflicted fatal blow on the head of the deceased-Hanuman, resulting to his death.

9. We have considered over the rival submissions and scanned the material on record.

From the evidence of complainant Smt. Ganga P.W. 4, it transpires that complainant party is in close relation with the appellant. There was no previous enmity or bad blood between them. It also transpires from the evidence that Amalya went to the house of appellant Harchanda to make complaint of his son Satyanarayan alias Dinya during which, quarrel started and on hearing the hue and cry, Gordhan and deceased-Hanuman along with their mother Smt. Ganga went there to rescue Amalya and while intervening, Gordhan, Smt. Ganga and deceased-Hanuman, also sustained injuries and on account of one blow inflicted on the head of Hanuman by appellant-Harchanda, he succumbed during his treatment in the SMS Hospital. According to P.W. 17-Dr. D.K. Sharma, there were chances to save the life of deceased-Hanuman in case immediate and proper treatment would have been provided. It is also significant to note that from the evidence of Dr. Ali Kumar Meena P.W. 11, appellant-Harchanda, Kishna and Satyanarayan alias Dinya were also medically examined by him on 13-2-1998 and he found injuries on their persons.

10. Thus, it is clear that the incident took place all of a sudden and there is no evidence to show that the injuries were inflicted on the body of deceased-Hanuman with the motive or intention to kill him or to cause such bodily injury which was likely to cause death. The appellant is alleged to have inflicted only

single blow. There is also no such evidence that the appellant had acted in any cruel manner and took undue advantage of the situation. Therefore, the offence caused by the accused-appellant would be covered by Clause IV of Section 300, IPC. Thus the act of the accused-appellant would amount to culpable homicide not amounting to murder punishable under Section 304, Part II and not under Section 302, IPC.

11. For these reasons we partly allow the appeal of appellant-Harchanda and instead of Section 302, IPC we convict him under Section 304, Part II, IPC. Since the appellant has remained in custody for more than six years and six months, the ends of justice would be met in sentencing him to the period already undergone by him in confinement. We, however, confirm the conviction of appellant under Section 323, IPC. The appellant has already suffered the sentence awarded to him under Section 323 IPC, therefore, we direct that the appellant-Harchanda, who is in Jail, shall be set at liberty forthwith, if not required to be detained in any other case.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**