

**Suk Charan Vs. State**

**Suk Charan Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/1158384](http://sooperkanoon.com/1158384)

**Court :** Delhi

**Decided On :** Jul-30-2014

**Judge :** Sunita Gupta

**Appellant :** Suk Charan

**Respondent :** State

**Advocate for Def. :** Ms. Ritu Gauba

**Advocate for Pet/Ap. :** Mr. Padam Kant Saxena, Ms. Aeshna Dahiya, Mr. Deepak Dahiya

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

30. h July, 2014 + CRL.A. 1438/2012 SUK CHARAN Through: ..... Appellant Mr. Padam Kant Saxena, Ms. Aeshna Dahiya & Mr. Deepak Dahiya, Advocates. versus STATE Through: ..... Respondent Ms. Ritu Gauba, APP SI Ashok Kumar, PS Dwarka South. % CORAM: HONBLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the judgment dated 9th August, 2012 and order on sentence dated 14th August, 2012 passed by the learned Additional Sessions

Judge, Dwarka Courts, New Delhi in Sessions Case No.162/2011 arising out of FIR No.244/2011 u/s 352/393/307 IPC registered with PS Dwarka, South whereby the appellant was sentenced as under:(i) RI for a period of 4 years with fine of Rs.1,000/- for the offences punishable u/s.452 IPC. The convict shall undergo further RI for a period of one month in case of default in payment of fine. (ii) RI for a period of one month for the offence punishable u/s.352 IPC. (iii) RI for a period of 4 years with fine of Rs.1,000/- for the offences punishable u/s 393 IPC. The convict shall undergo further RI for a period of one month in case of default in payment of fine. (iv) RI for a period of 6 months for the offence punishable u/s 323 IPC. All the sentences were to run concurrently. He was given benefit of Section 428 Cr.P.C.

2. The gravamen of the prosecution case is that on 29 th August, 2011, on receipt of DD No.25A, SI Raj Kumar along with Constable Jai Prakash reached Flat A-504, Plot No.21, Dwarka Apartments, Sector-7, Dwarka where he met the owner of the flat, namely, Tanu Srivastava, her mother, guard and other persons. There were scratch marks on the throat of Tanu Shrivastava. He recorded her statement Ex.PW1/A. Rukka/Ex.PW4/A was sent to the Police Station through Constable Jai Prakash on the basis of which FIR under Section 352/393/307 IPC was registered. Complainant was sent to the hospital for medical examination. Site plan Ex.PW4/B was prepared. Accused was arrested. Chappal of the accused lying at the spot was also seized during the course of investigation. Wife of the accused Vishakha was also arrested. After completing investigation, charge sheet was submitted against the accused. After the case was committed to the Court of Sessions, charge for offence under Section 452/352/393 and 307 IPC was framed against the accused to which he pleaded not guilty and claimed trial.

3. In order to substantiate its case, prosecution examined six witnesses. Accused denied the case of prosecution. According to him, he had gone to the house of the complainant to demand Rs.2000/- as advance as his wife was working as a maid in her house. She refused to give advance saying that his wife was working in her house for just 15 days and she also remained absent for 3-4 days. She became angry on hearing his demand and in such a state of anger, told him that she would give him five lacs rupees so that he can live a lavish life. While they were talking to

each other, she threatened him to leave or she would call police. He left the house in hurry. He did not hold or touch the body of Tanu Srivastava. Rather she pulled his hair and declared that he was a thief. He did not prefer to lead any evidence.

4. Vide impugned judgment, the appellant was convicted for offence under Section 452/352/393 and 323 IPC and was sentenced as mentioned hereinbefore.

5. Feeling aggrieved, the present appeal has been preferred by the appellant.

6. Sh. P.K. Saxena, learned amicus curiae for the appellant submitted that as per the version given by the complainant, she had informed the PCR, however, the DD lodged on the information given by the complainant with PCR has neither been placed on record nor proved. The police machinery was set in motion on DD No.25A. However, the same merely states that a person had entered the house. The lady was alone and her neck had been pressed. The details given in this DD reflects that it was not recorded at the instance of the complainant. It was further submitted that the entire case of prosecution hinges on the testimony of the complainant. As such, she being the solitary witness, her testimony is required to be scrutinized with care and it was submitted that she has made material improvements in her testimony, inasmuch as, in initial complaint lodged by her with the police, she nowhere stated that her maid Vishakha was not coming for work for the last 2-3 days or that the accused had come to her on 27th August, 2011 informing that his wife Vishakha was unwell and would not be coming for work for 2-3 days. Moreover, according to her, many neighbours had collected on hearing her cries but no neighbour was examined by the police. He further referred to the highhandedness on the part of the police officials for arresting wife of the appellant by submitting that although there was no allegation against her yet she was arrested and even charge sheet was submitted against her but she was discharged by the Court. As such, it was submitted that prosecution has not been able to prove its case beyond reasonable doubt and the accused is entitled to be acquitted of the offence alleged against him.

7. Ms. Ritu Gauba, Additional Public Prosecutor for the State submitted that it is a crime against a woman. Such like incidents of robbery are increasing and the accused betrayed the trust reposed by the complainant as he was none else but

the husband of the maid servant working in the house of the complainant. Yet, he not only went to commit robbery but also pressed her neck. It was only due to courage mustered by the complainant that she could get herself freed.

8. It was further submitted that minor improvements are of no consequences which are bound to occur in the testimony of the witnesses. In fact, the appellant has admitted the entire case of prosecution. The impugned order does not suffer from any infirmity which calls for interference. It was, however, submitted that the appellant is not involved in any other case. He has a family to support, as such, keeping in view the young age of the appellant and the family responsibilities, the Superintendent, Jail should be directed to depute him on learning some skilful work so that after coming out from jail, he may be gainfully employed.

9. It is true that the star witness of the prosecution is the complainant herself. The complainant appearing as PW-1 had deposed that she was working in M/s. Birla Sunlife Insurance Co. Ltd. and usually used to leave for the office at about 9.15 a.m. or 9.30 a.m. However, on 29.8.2011, she had taken half days leave from her office, as it was her birthday. Her maid had not been coming for work for the last two or three days. She further deposed that as soon as she finished her pooja at about 11 am, she opened the main gate of the flat and went outside to throw the waste etc. in the dustbin of the flat. When she entered again into the flat, she straight away went to wash her hands and thought that she would bolt the gate from inside, after washing her hands which had become dirty. When she came out of the wash room, which is situated just adjacent to the main gate on the right side, she saw that accused had already entered the flat. She asked him, how he had entered the flat and he immediately gagged her mouth by one hand and by the other hand held her throat and attempted to throttle her. He dragged the complainant upto her bed room, laid her on the floor and tried to press her throat with hand. She somehow pushed his abdomen with her feet and freed herself from his clutches and started running towards the main gate. The accused again caught hold of her. At this juncture she asked him what he wanted from her. He replied that he wanted Rupees two lacs. She told him that she would give him Rs. 5 lacs if he spares her. By that time, they had reached upto the gallery near the drawing room and were standing near the wall of the gallery. She somehow mustered

courage and banged his head against the wall, as a result of which, the grip of the accused around her neck loosened and she immediately opened the latch of the main gate and ran outside the flat. She raised alarm saying bachao bachao. On hearing her cries, her mother who resides in the flat beneath her flat, came upstairs. As soon as her mother came, accused fled from the spot. After sometime, she gave information to the PCR at No.100 and PCR personnels reached the spot within ten minutes. Thereafter the Police officials from the local police station reached her flat. Police recorded her statement Ex.PW1/A. In cross examination, she deposed that the accused must have remained in her flat on 29.8.2011 for about 15 minutes and he was not armed with any weapon. He only pressed her throat and her mouth. She had made a call to the Police at about 11.40 a.m. She further stated that residents of flats situated on the floors above and beneath her flat also came to her flat upon hearing the noise. Security guard of the flats also reached the spot after some time. She denied the suggestions put to her by the learned counsel for the accused that accused had come to demand some advance money or that she misbehaved with him and asked him to leave the flat or that when accused insisted to leave the flat only after receipt of advance money she implicated him in this false case.

10. The mother of the complainant has been examined as PW-2. She also identified the accused to be the husband of maid Vishakha, who used to work in flat of her daughter Tanu Srivastava. She further deposed that on 29.08.2011 at about 11.30 a.m., when she was present in her flat and on hearing the cries of her daughter Tanu from outside, she immediately ran towards her flat and found her daughter shouting for help and at the same time, the accused was also present at the gate of Tanus flat and he ran away immediately. She also stated that on 27.08.2011 also, the accused had came to the aforesaid flat of Tanu in the morning at about 6 or 6.30 am to say that his wife Vishakha would not come for work for about 2 or 3 days. There is nothing worth mentioning in the cross examination of this witness.

11. From the testimony of PW1 and PW2 and the answers given by the accused in pursuance to the question put to him under Section 313 Cr.P.C., it is apparent that accused does not dispute that his wife Vishakha was working as a maid in the

house of the complainant. He also does not dispute that few days prior to the date of incident, he had gone to the house of the complainant for telling that his wife was not well and she would not be coming for job for 2-3 days. Although there is a slight dispute regarding the date of such visit of the accused to the complainants house, inasmuch as, the complainant has deposed that accused came to her house on 27 th August, 2011 for informing that his wife would not be coming for job for 2-3 days whereas the accused in his statement under Section 313 Cr.P.C. stated that he had gone there on 25th August, 2011. This discrepancy however is inconsequential. It is also not disputed by the accused that on the fateful day, he had gone to the house of the complainant and met her. The only variation is regarding the purpose of his visit, inasmuch as, according to the complainant after entering the flat, the accused gagged her mouth by one hand and attempted to throttle her and demanded a sum of Rs.2 lacs, whereas, according to the accused, he had gone to the house of the complainant to demand a sum of Rs.2000/-as advance on which she got annoyed and got him falsely implicated in this case.

12. As regards the submission that there is the solitary testimony of the complainant, it is settled law that a conviction can be based on the solitary testimony of a witness.

13. In *Sunil Kumar v. State of Govt. of NCT of Delhi*, (2003) 11 SCC367 Honble Supreme Court repelled a similar submission observing that as a general rule, the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony, the courts will insist on corroboration. In fact, it is not the number, the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise.

14. In *Namdeo v. State of Maharashtra*, (2007) 14 SCC150 Honble Apex Court reiterated the view observing that it is the quality and not the quantity of evidence which is necessary for proving or disproving a fact. The legal system has laid

emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence.

15. In *Kunju @ Balachandran vs. State of Tamil Nadu*, AIR 2008 SC1381 a similar view has been taken placing reliance on various earlier judgments including *Jagdish Prasad vs. State of M.P.*, AIR 1994 SC1251 and *Vadivelu Thevar vs. State of Madras*, AIR 1957 SC614 16. As such, there is no bar in basing conviction of accused on the solitary testimony of complainant.

17. As regards the submission that there are certain improvements in the testimony of the complainant, here again it may be stated that minor discrepancies regarding minute details of the incident including the overt acts are possible even in the version of truthful witnesses. In fact such discrepancies are inevitable. Such minor discrepancies only add to the truthfulness of their version.

18. Honble Supreme Court in *Sohrab v. State of Madhya Pradesh*, AIR 1972 SC2020 observed:

Honble Supreme Court has held that *falsus in uno falsus in omnibus* is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered.

19. Substantially similar view was taken by Honble Apex Court in *Krishna Mochi & Ors. vs. State of Bihar*, (2002) 6 SCC81 wherein it was observed as under:

If a whole body of the testimony is to be rejected because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration

of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respect as well. The evidence has to be satisfied with care. One hardly comes across a witness, whose evidence does not contain a grain of untruth or at any rate exaggeration, embroidery or embellishments. An attempt has to be made to separate the grain from the chaff.

20. Honble Supreme Court in *Gangabhavani v Rayapati Venkat Reddy and Ors* 2013(11) SCALE132 held :

9. In *State of U.P. v. Naresh* (2011) 4 SCC324 this Court after considering a large number of its earlier judgments held: In all criminal cases, normal discrepancies are bound to occur in the depositions of witnesses due to normal errors of observation, namely, errors of memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of the witness and other witnesses also make material improvement while deposing in the court, such evidence cannot be safe to rely upon. However, minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety. The court has to form its opinion about the credibility of the witness and record a finding as to whether his deposition inspires confidence. Exaggerations per se do not render the evidence brittle. But it can be one of the factors to test credibility of the prosecution version, when the entire evidence is put in a crucible for being tested on the touchstone of credibility. Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements as the same may be elaborations of the statement made by the witness earlier. The omissions which amount to contradictions in material particulars i.e. go to the root of the case/materially affect the trial or core of the prosecution's case, render the testimony of the witness liable to be discredited. A similar view has been reiterated

by this Court in Tehsildar Singh and Anr. v. State of U.P. AIR 1959 SC1012 Pudhu Raja and Anr. v. State, Rep. by Inspector of Police JT2012(9) SC252 and Lal Bahadur v. State (NCT of Delhi) (2013) 4 SCC557.

10. Thus, it is evident that in case there are minor contradictions in the depositions of the witnesses the same are bound to be ignored as the same cannot be dubbed as improvements and it is likely to be so as the statement in the court is recorded after an inordinate delay. In case the contradictions are so material that the same go to the root of the case, materially affect the trial or core of the prosecution case, the court has to form its opinion about the credibility of the witnesses and find out as to whether their depositions inspire confidence.

21. In Sidhan v. State of Kerala, 1988 Cr.L.J.

470, it was held:

Minor discrepancies regarding minute details of the incident including the sequence of events and overt acts are possible even in the version of truthful witnesses. In fact such discrepancies are inevitable. Such minor discrepancies only add to the truthfulness of their evidence. If on the other hand these witnesses have given evidence with mechanical accuracy that much have been a reason to contend that they were giving, tutored versions. Minor discrepancies on facts which do not affect the main fabric need not be taken into account by the courts if the evidence of the witnesses is found acceptable on broad probabilities.

22. The principle that can be culled out from the aforesaid decisions are that minor discrepancies and inconsistencies cannot be given undue importance. The Court has to see whether inconsistencies go to the root of the matter and affect the truthfulness of the witness.

23. The variance/improvements pointed out by the learned counsel for the appellant are trivial in nature and does not go to the basic substratum of the case. In fact, same are only explanatory/introductory in nature to explain that accused was not unknown to the complainant as he was husband of Vishakha who was working as a maid servant in the house of complainant. On earlier occasion also,

he had come to her house to inform that his wife would not come for work for 2-3 days being unwell. The mere fact that as per his version, he had gone to demand some advance from the complainant as his wife was working as a maid servant in her house, cannot furnish the ground to falsely implicate the accused in this case. At the most, if any advance has been demanded by the accused, the complainant would have refused to give the same but for that reason she would not call the police and implicate him in this false case. Moreover, the accused is not alleging any animosity against the complainant for which reason she would falsely implicate him in this case.

24. Moreover, her ocular testimony finds corroboration from the medical evidence, inasmuch as, complainant was taken to DDU Hospital where she was examined by Dr. Manjeet Singh who prepared her MLC/Ex.PW6/A. As per the MLC, there were multiple bruise over neck with abrasion over left side of neck, cheek. Under the circumstances, there is no reason to disbelieve the testimony of the complainant as she has no axe to grind to falsely implicate the accused in this case. That being so, the prosecution had succeeded in establishing its case under Section 452/352/393 and 323 IPC beyond reasonable doubt and the findings of the learned Trial Court cannot be said to suffer from any infirmity which calls for interference.

25. Coming to the quantum of sentence, it is not in dispute that the appellant is not involved in any other criminal case. He has the responsibility to maintain his wife as well as the minor children. As per the nominal roll, he has remained in custody for a period of 2 years and 16 days. Besides that, he has earned remission for a period of 7 months and 10 days. His overall conduct has been reported to be satisfactory.

26. Keeping in view the totality of the facts and circumstances, ends of justice will be met if the appellant is released on the period already undergone. Accordingly, while maintaining the conviction of the appellant, his sentence is modified to the period during which he remained as under trial in this case. He be set at liberty, if not wanted in any other case. Intimation be sent to the appellant through Superintendent, Jail. The appeal stands disposed of. Copy of the judgment along

with Trial Court record be sent back. (SUNITA GUPTA) JUDGE JULY30 2014 rs

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