

Mohd. Habib Vs. State

Mohd. Habib Vs. State

SooperKanoon Citation : sooperkanoon.com/685108

Court : Delhi

Decided On : May-12-1988

Reported in : 1989CriLJ137; 1988(2)Crimes677; 35(1988)DLT170

Judge : Charanjit Talwar and; M.K. Chawla, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 324 and 376

Appeal No. : Criminal Appeal No. 82 of 1984

Appellant : Mohd. Habib

Respondent : State

Advocate for Pet/Ap. : A.S. Ahluwalia and; M.S. Siddique, Advs

Judgement :

Charanjit Talwar, J.

(1) The appellant, Mohd. Habib, was convicted for the offence under Section 376 of the Indian Penal Code, for having committed rape on a minor girl, Aruna Kumari, on 19th August 1980 at about 2.00 p m. He was sentenced to life imprisonment. He has also been convicted for the offence under Section 324 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500.00 . In default of payment of fine, he has been directed to undergo further rigorous imprisonment for six months. The appellant

challenges the legality of the judgment dated 11th October 1983, holding him guilty of the above mentioned charges, and also the order of the same date sentencing him.

(2) The central point to be noticed in this appeal is that the medical evidence falsifies the evidence of the two eye witnesses as well as of the prosecutrix. The appellant, aged 21 years, is alleged to have been arrested at the spot. He was medically examined by Dr. Suresh Kumar of the Police Hospital, Delhi, at 8.35 p.m. on the date of the incident. The medico-legal certificate is Exhibit PA. As the genuineness of this certificate was admitted by the appellant in his statement made on 15th January 1983, Dr.Suresh Kumar was not called to the witness box. It was found that the appellant had three simple injuries, one was on the skull, the second on right thumb and the third on the left hand. His male organ was found to be fully developed, but there was no injury on his penis.

(3) The prosecutrix was medically examined by Dr. Aruna Behl, Lok Nayak Jaya Prakash Narain Hospital, at 6.00 p.m. The medico-legal certificate prepared by that doctor (Exhibit Public Witness . 8/B) has been proved by Dr. B. Bhattacharya of J.P.N. Hospital as Public Witness . 8. He had taken the X-rays for determination of her bone age on that very day. He opined that she was between 7 to 10 years of age. This witness was not cross-examined at all although an opportunity was granted. The medico-legal certificate (Exhibit P.W. 8/B) shows that there was a bite mark on .the right thigh of the prosecutrix and that her hymen was ruptured. The doctor has not recorded that Aruna Kumari was bleeding from the vagina, nor did she find any bruises, nor any swelling, redness or inflammation.

(4) The plea based on the medico-legal certificates, Exs. Pa and Pw 9/B, is two-fold : (i) that if a girl of 7 to 10 years of age is subjected to rape by a fully developed man as is the case here, there are likely to be injuries on his male organ; and (ii) that if the rape had been committed on 19th August 1980 as alleged, the lady doctor would have certainly found at least some swelling, redness or inflammation on the female organ Mr. Ahluwalia, learned counsel for the appellant, relies on Rahim Beg v. The State of U.P. : 1972 CriLJ1260 , in support of his first plea. In paragraph 26 of that judgment, it has been observed

that :

'ACCORDING to Dr. Katiyar, Medical Officer of District Jail, Rae Bareilly, if a girl of 10 or 12 years who is virgin and whose hymen is intact is subjected to rape by a fully developed man, there are likely to be injuries on the male organ of the man. No injury was, however, detected by the doctor on the male organ of any of the two accused. The absence of such injuries on the male organs of the accused would thus point to their innocence.'

In support of the second limb of the argument, learned counsel cited catena of authority. The argument is that rape, even if committed on the prosecutrix, was not on 19th August 1980 and certainly not by the appellant.

(5) Learned counsel for the respondent has, however, cited *Manga v. State of Haryana* : 1979 CriLJ939 , in support of his contention that the medical evidence cannot be held to be conclusive and can hardly be relied upon to falsify the evidence of the eye witnesses because it (the medical evidence) is guided by various factors based on guess and certain calculations. In this reported case, the evidence of the eye witnesses was corroborated by the blood stained salwar of the prosecutrix. It was further corroborated by the fact that the swab which was taken from the vagina, on medical examination, was found to have seminal stains.

(6) There can be no doubt that in a case where ocular evidence inspires confidence and is reliable, it would not be safe to hold that the medical evidence falsifies the testimony of the witnesses. Thus, in, the present case, because of the medical evidence which establishes that the rape could not have been committed on the day alleged, the testimony of the eye witnesses has to be carefully scrutinised.

(7) The eye witnesses in the present case are Shri Krishan Avtar Handa (P.W.2) and Sardar Richpal Singh (P.W.3). Shri Handa stated that on 19th August 1980 he was standing at the bus stop at Ramesh Park for going to Connaught Place. At about 1.00 or 2.00 p.m. one Sardarji, who was standing at the bus stop, told him that he had heard some noise. Shri Handa (P.W. 2) also heard some cries. Thereafter, to quote him :

'BOTH of us ran towards the place from where the cries were coming. The place was near the pusta adjacent to Narain Nagar. There was one room also and that was probably uninhabited at a short distance. I saw the accused present in court, lying on the prosecutrix present in court. The prosecutrix was naked and her underwear was lying on one side. By naked I mean, that she was without underwear. The accused had his open underwear and the pant below the knees. Both of us saved the prosecutrix and caught the accused, who had tried to run away, from the spot I had noticed teeth bite on the left leg of the prosecutrix. On raising alarm by both of us, so many persons had collected there. In the meantime, Police also arrived there and we handed over the accused to the police.'

In cross-examination, he admitted that the place of occurrence was a pit about two and a half feet deep, and it was visible from the bus stop being at a distance of 50 to 60 yards. He admitted that he was alone at the bus stop and that he had seen the 'accused dragging the girl.' The other witness, namely, Richpal Singh, had come to the bus stop and told him that 'some noise was coming from the place of occurrence'. Both of them ran towards the place of occurrence and after catching the accused, the prosecutrix went to her house. Some persons arrived there who beat the accused. The prosecutrix came to the spot along with her mother and after about an hour of their arrival (the prosecutrix and mother), the police reached the spot and stayed there for three or three and a half hours. According to him, the statements of the prosecutrix and of Public Witness . 3. Richpal Singh, were recorded at the spot. He, however, denied the suggestion that he was not an eye witness and that he was deposing falsely because he knew the father of the prosecutrix. He also denied that the accused had been falsely implicated as he is a Muslim.

(8) Public Witness . 3, Richpal Singh, stated that on 19th August 1980 at about 2.00 or 2.15 p.m. he saw the accused, whom he identified in court, pulling the prosecutrix towards a pit. He saw Public Witness . 2 standing nearby the bus stop; he contacted him and asked for his help. They ran towards the place from where the cries were coming. He noticed that the prosecutrix was lying in the pit and the accused had gagged her mouth with his hand. He found that the underwear of the

prosecutrix was lying aside. The underwear and pant of the accused were below his knees. On seeing them, the accused stood up and the prosecutrix started shouting 'save me'. The prosecutrix narrated the entire incident. The accused tried to run away, but was caught by him. He further stated that police come there. The memo Exhibit Public Witness . 3/A bears his signature and was prepared in his presence. A packet of biscuits was taken into possession, vide this memo. The packet of biscuits was kept in a sealed cover. Exhibit P-2. According to him dust was lifted from the spot and was taken into possession, vide Memo Exhibit Public Witness . 3/B. This exhibit also bears his signature at mark 'A'. The underwear of the prosecutrix Exhibit P-1) was also seized by the police after converting it into a sealed parcel, vide Memo Exhibit Public Witness . 3/C.

(9) In cross-examination Richpal Singh (P.W. 3) admitted that the bus stop was at a distance of 40 to 50 yards away from the place of occurrence. The only person, who was standing at the bus stop, was Public Witness . 2 He reaffirmed that he had seen the accused dragging the prosecutrix. He admitted that later on some persons from the public beat the accused when he tried to escape. He further stated that after the accused was caught, the prosecutrix ran away after taking her underwear with her and thereafter came to the spot with her mother. He went on to state that :

'MOTHER came first and thereafter the police. I stayed with the accused and the public persons at the place of occurrence itself. Police came after 45 minutes or one hour. Mother did not bring the police with her. I remained at the place of occurrence for one or 1' hour. I had not gone to the police station. Police did make enquiries from me at the site. My signatures were obtained on three papers. Those papers related to the seizure of the underwear, biscuits and the soil. Prosecutrix had left the underwear at her house when she had gone to call her mother after the incident. That underwear was procured from there by the police. Police remained there up to 6.15 p.m and by that time I also remained there.'

He denied the suggestion that he was not present at the spot and that he was deposing falsely because he knew the family of prosecutrix. He further denied that the accused was caught from the crowd at the instance of the police.

(10) It appears from the record that the statement of the prosecutrix, which statement is the basis of the First Information Report, was recorded by Assistant Sub Inspector, Chattar Singh, at the residence of the prosecutrix on on 19th August 1980 at 4.50 p.m. That statement, the translation, of which is Exhibit Public Witness . 1/A, reads as follows :

'I reside on the above noted address Along with my parents and I am a student of IIIrd standard. Today at about 2.00 p.m. when I came to answer the call of nature (torn) at a nearby place, this man whose name has come to be known as Mohd. Habib came and caught hold of me, and he after taking off my underwear, started committing rape with me. Actual words being 'BADFAILI Karni Shru Kar DI'). On my raising alarm, he slapped me at my face, gagged my mouth and bitten on my left leg above the knee. Thereafter be committed rape with me. (ISKEBAD Usne Mere Saath Bura Kam KIYA) In the meanwhile, on hearing the alarm, two persons, whose name have now come to be know as Richpal Singh S/o Sh. Ajit Singh R/o House No. S-426, School Block Shakarpur and Sh. A.K. Handa R/o Late Sh. Karam Chand R/o H. No. 1-176, Laxmi Nagar Extension, Delhi-92, came there and saved me and over-powered this Badmash. I have heard the statement and the same is correct.'

This statement was attested by the Assistant Sub Inspector. His report to the Duty Officer of Police Station, Gandhi Nagar (Police Post Shakarpur falls within the jurisdiction of that police station) is as follows :

'IT is submitted while on government duty that I the A.S.I. reached 1-73 Laxmi Nagar Extension for making investigation into D.D. 26 dated 19.8.80 P.P. Shakarpur, where I recorded the above noted statement of Kumari Aruna D/o Shiv Prashad (aged 8 years) r/o H. No. 1-73 Laxmi Nagar Extension The statement was read over to her and she having admitted the same to be correct put her signature in Hindi in my presence, to which I attest. The above statement discloses the commission of an offence punishable u/s. 376 Indian Penal Code . Hence, this writing is being sent to the police station through Constable Mahabir Singh No. 48 I/E for the registration of the case. After the registration of case, the number of the case (may be intimated). I the A.S.I. am busy with (investingation)

at.....torn..... Place of occurrence : -Near Rainy Well, Laxmi Nagar, Extension, Delhi. Time of dispatch of writing : 4.50 p.m.'

On receipt, of the report the formal F.I.R. (Exhibit Public Witness . 4/A) was recorded at 5.20. p.m. the said police station. Assistant Sub Inspector, Chattar Singh, the investigating officer of the case, has appeared as Public Witness . 9. According to him, after the statement (Exhibit Public Witness . 1/A statement) along with his endorsement (Exhibit Public Witness . 9/A), quoted above, was sent for the registration of the case, he took the grill to the spot and prepared the site plan. As has been noticed above, the time of dispatch of his endorsement was 4.50. p.m. It is thereafter that he recorded the statements of the witnesses and arrested the accused from the spot. He stated that one packet of biscuits was seized from the spot vide Memo, Exhibit Public Witness . 3/A. He further stated as follows:

'I took into possession the underwear of the girl which is Ext. P1, vide memo Ext. PW3/C. I also took into passion the dust from the spot vide memo Ex. PW3/B. I also took into passion underwear of the accused from the hospital vide memo Ext. PW6/A which is Ext. P3. The girl was sent for medical examination. She was medically examined by Dr. Aruna Bahel vide Mlc Ext. PW8/B. I immediately collected the Mlc Ext. PW8/B. from Dr. Aruna. She has left the hospital and her present where- abouts are not known. I made personal enquiries from the hospital. I also collected the history of the prosecutrix from the hospital which is Ext. PW9/C,'

In cross-examination, he stated that he had reached the place of occurrence at 3.30 p.m. The residence of the girl's parents was at a distance of 50 yards from the place of occurrence. He met the witnesses at the spot and recorded their statements at about 4.00 p.m. He denied the suggestion that the boy who had committed the rape had run away and that the accused was was implicated on mere suspicion.

(11) The timings and the sequence of events given by the Investigating Officer in his statement do not tally with the timings and the sequence of events given by the other witnesses as well as by the prosecutrix. According to Public Witness . 2, Krishan Avtar Handa, the prosecutrix and her mother had arrived at the spot much

earlier to the arrival of the police and that the prosecutrix's statement was recorded at the spot. According to this witness, the prosecutrix had taken her underwear from the spot with her when she went to call her mother. The police Officer, however, says that he took that underwear into possession at the spot. Public Witness .3 (Sardar Richpal Singh) is also an attesting witness to the seizure memo, whereby the underwear was taken into possession at the spot, which is Exhibit Public Witness . 3/C. The Investigating Officer in his endorsement. Exhibit Public Witness . 9/A, has stated that he went to the house of the prosecutrix, on receipt of a daily diary report No. 26. That report has been exhibited as Public Witness . 7/A. It was proved by Constable, Satish Kumar, who was a Moharar posted at Police Post Shakarpur on 19th August 1980. According to that report, some unknown person had informed through telephone that 'some incident is taking place with some girl at the site of Pushta and, thereforee, some officer may be sent. On receipt of the telephonic information, the report has been entered into the daily diary. Hence, a copy of the report No. 7 has been prepared and sent through Constable Saheb Singh No. 825/E to Shri Chattar Singh A.S.I, who is already away in connection with report No. 5, and he would take appropriate action in the matter.'

(12) Constable Saheb Singh has been produced as Public Witness . 6. He stated that on receipt of the telephonic information (Exhibit Public Witness . 7/A), he went to the place of occurrence along with Assistant Sub-Inspector, Chattar Singh, at about 3.00 p.m. He found a large crowd. The accused, who was in custody of the public, was apprehended. He further stated that :

'The prosecutrix was also there at that time. Asi Chattar Singh and myself had taken the accused to police hospital, Rajpur Road. We had taken the prosecutrix along with her parents to Safdarjang Hospital for her medical examination. The doctor in the police hospital, had removed the kachha of the accused and it was sealed into a parcel in our presence and was taken into possession vide memo Ext. PW6/A.'

(13) This witness does not support the version of the Investigating Officer that on receipt of the daily diary they had gone to the house of the prosecutrix. According

to him (P.W. 6), the prosecutrix was also at the spot and the time was about 3.00 p.m. The Rukka endorsement (Exhibit P.W. 9/A) prepared by the Investigating Officer specifically brings out that the statement of the prosecutrix was recorded at about 4.50 p.m. at her residence. This witness, Constable Saheb Singh, belies completely the sequence of events as given by the Investigating Officer. The eye witnesses also have given a version which is at variance with the case put forth by him, i.e. the Investigating Officer. It is not clear from which place was the underwear of the girl taken into possession. Public Witness . 6 states that the prosecutrix was at the spot at about 3.00 p.m. and from there she was sent to the hospital. He does not say anything about the visit of the Investigating Officer to the house of the prosecutrix. The prosecution has chosen not to produce the mother of the prosecutrix, who is supposed to have accompanied her after Aruna Kumari had reported the matter to her.

(14) The two eye witnesses allege that they saw the prosecutrix (who had gone to ease herself at about 2.00 p.m.) being dragged by the accused towards the pit. The pit, according to them, was about 50 to 60 yards away from their respective places where they were standing. The site plan, Exhibit Public Witness . 9/B, however shows that the said pit is about 70 to 75 steps from the point where Public Witness . 2 was waiting for the bus. Even after seeing a child being dragged, apparently the witnesses did not interfere. According to the counsel, these witnesses are young men : Public Witness . 3 stated that his age was 20 years and Public Witness . 2 claimed to be 39. The argument is that on seeing a child being dragged, the witnesses were expected to rush towards her to rescue her and the distance being just about 75 steps, the same could have been covered in less than a minute. A normal human being was expected to do that. Instead, on their own showing, they waited till they heard the cries, and then rushed towards the pit. Even then, the argument proceeds, they must have covered the distance in a minute or so, and in that interval it could not have been possible for a person with intention to rape a girl to have offered the biscuits; to have gagged the girl, as is the claim; to have taken off her underwear; undress himself to some extent; and complete the act. In the view which we are taking, it is not necessary to give a finding as to whether it was possible to complete the act in that interval, but the attitude of the witnesses after having seen a young girl being dragged, does

appear to be a little odd, at least on the part of Shri Handa (P.W. 2) who knew the family of the prosecutrix as he was their neighbour at one time.

(15) The statements of the witnesses were recorded at the spot after the arrival of the police at 3.00 p.m. while the endorsement (P.W. 9/A) made by the Investigating Officer, recommending the registration of the case, on the prosecution's own showing, was at 4.50 p.m. This fact throws considerable doubt whether the investigations were carried out in the manner alleged. From the testimony of the Investigating Officer and of Constable, Saheb Singh (P.W. 6), it appear that neither the accused nor the prosecutrix were taken to the police post or the police station, but the prosecutrix says that she was taken to the police station where the accused was given beating by the police constables. As noticed above, Public Witness . 6. Saheb Singh, says that it was from the spot that the prosecutrix as well as the accused were taken for medical examination. Further the eye witnesses state that the underwear had been taken away by the prosecutrix to her house whereas the police officers claim to have seized it from the spot. And there is no Explanationn as to why the mother of the prosecutrix, who, it is alleged by the witnesses, had come to the spot immediately after the occurrence, has not been produced. The details of incident must have been narrated to her. The omission in not producing her also throws doubt on the credibility of the investigation.

(16) After giving our careful consideration to the prosecution version, as discussed above, we are of the view that the true picture of the incident is not being disclosed. The medical evidence goes to show that the prosecutrix was not raped on 19th August 1980. As the oral testimony does not inspire complete confidence, we are unable to hold that the prosecution has been able to prove the charges as framed against the appellant. We may notice another fact. According to the medico-legal certificate (Exhibit Public Witness . 8/B), a swab was taken from the vagina of the prosecutrix. That swab was sent to the Chemical examiner for analysis. The reports of the Central Forensic Laboratory, Exhibits Public Witness . 9/D and Public Witness . 9/E do not show that any seminal stain was found thereon. The underwear of the prosecutrix also did not contain any blood or semen. But, that might be because the allegations are that the underwear had

been taken off and thrown on the ground. However, the prosecution was expected to seize the frock, which was worn by the prosecutrix at the time of the alleged rape because that could have shown some seminal stains. The underwear of the appellant taken into custody at the hospital also did not show any semen stains. In fact, there is no corroboration at all of the evidence of Public Witness . 2 and Public Witness . 3.

(17) In the facts and circumstances of the present case, we are of the opinion that the medical evidence falsifies the evidence of the eye witnesses and of the prosecutrix. We, thus, hold that it has not been proved beyond a reasonable doubt that Aruna Kumari was raped on 19th August 1980. We allow the appeal and set aside the impugned judgment and order dated 11th October 1983. We direct that the appellant be released forthwith.

18. Appeal Allowed.

--- *** ---

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com