

Suneel Kumar Vs. State of H.P.

Suneel Kumar Vs. State of H.P.

SooperKanoon Citation : sooperkanoon.com/890254

Court : Himachal Pradesh

Decided On : Jul-04-2005

Reported in : 2006CriLJ1471

Judge : Lokeshwar Singh Panta and; Surjit Singh, JJ.

Acts : [Evidence Act, 1872](#) - Section 103; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 376; ;Code of Criminal Procedure (CrPC) - Sections 107 and 151

Appeal No. : Cri. Appeal No. 453 of 2003

Appellant : Suneel Kumar

Respondent : State of H.P.

Advocate for Def. : Som Dutt Vasudeva, Addl. Adv. General and; D.S. Nainta, Dy. Adv. General

Advocate for Pet/Ap. : Anup Chitkara, Adv.

Disposition : Appeal allowed

Judgement :

Surjit Singh, J.

1. Appellant Suneel Kumar alias Sony has been tried, convicted and sentenced for an offence under Section 376 of the Indian Penal Code by the learned Additional Sessions Judge (I), Hamirpur vide judgment dated 27-9-2003, delivered in Sessions Case No. 20/2000 (RBT No. 6/2002). He is aggrieved by the said judgment and has, therefore, preferred this appeal.

2. Prosecution's case as per record of the trial Court may be summed up thus. The prosecutrix, at the relevant time was a minor aged about eight years, she is of low I.O. she resided with her mother and grand mother in a village falling within the jurisdiction of Police Station, Barsar of District Hamirpur. Her father was employed at some shop at Delhi. On 13-10-1999 her mother and grand-mother had gone to the fields for doing some agricultural work. Around 3.00 or 4.00 p.m. when her grand-mother returned, she saw the prosecutrix in the cattle shed adjacent to her house. The appellant, who was then aged about 19 years, was also there. On seeing the grand-mother of the prosecutrix, the appellant ran away from the spot. The prosecutrix was crying. Her grandmother went to her and saw that she was bleeding from her private parts. She (the grand-mother) went to the fields to inform the mother of the prosecutrix. The mother of the prosecutrix tried to contact her husband at Delhi telephonically on 14-10-1999 but could not succeed, as he was not at the shop at that time. Thereafter a brother of the father of the prosecutrix informed her father telephonically. He came to the village probably on 17-10-1999. The incident was narrated to him by his mother and wife. Next day the prosecutrix was taken to Hamirpur by her father, where a type written complaint was submitted to the Superintendent of Police, Hamirpur. The Superintendent of Police directed the father of the prosecutrix to go to Police Station, Barsar. The Superintendent of Police also deputed a constable, with him (the father of the prosecutrix). At the Police Station, on the basis of the aforesaid type written complaint, a case was registered, under Section 376 of the Indian Penal Code.

3. The police investigated the case. During the course of the investigation, it was found that the mother of the appellant, on coming to know that the appellant had committed a heinous crime, washed the salwar of the prosecutrix. The police took into possession that salwar. The prosecutrix was not medically examined. The doctor in the course of such examination found that the hymen of the prosecutrix

was torn. Also a small linear laceration posteriorly extending towards fourchette, not yet healed completely, had also been noticed. Slide of vaginal smear was prepared. The said slide and the salwar and the shirt of the prosecutrix were sent to the Chemical Examiner, who found blood-stains on the same. The appellant was also got medically examined. He was found to be capable of performing sexual intercourse.

4. Evidence regarding the age of the prosecutrix was also collected. Finally the appellant was challaned. On the case being committed to the Sessions Court, the learned Additional Sessions Judge tried the appellant for the offence under Section 376 of the Indian Penal Code. His mother, who too was challaned under Section 201 of the Indian Penal Code, was also tried along with him. At the end of the trial, the mother of the appellant was acquitted. The appellant was, however, found guilty of the offence, under Section 376 of the Indian Penal Code and convicted accordingly. He was sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 10,000/-, and in default of payment of fine to undergo rigorous imprisonment for a further period of one year.

5. Appellant's plea is that he was in police custody on the day and at the time when the crime is alleged to have been committed and, therefore, he could not have been convicted of the offence. In other words, he has taken the plea of alibi.

During the course of hearing of the appeal, besides addressing arguments with regard to the plea of alibi, the learned Counsel urged that even otherwise the evidence on record did not substantiate the allegation of rape.

6. First we take up the plea of alibi, as raised by the appellant, for discussion and determination. It is made out from the prosecution's own evidence that a day prior to the alleged incident of rape, i.e. on 12-10-1999, another incident involving the prosecutrix and her mother on one side and the appellant on the other, had taken place. The report with respect to that incident was lodged with the police by the mother of the prosecutrix, namely PW-2 Rattani Devi, on 13-10-1999 at Police Station, Barsar. The police reached the village of the parties (the appellant and the prosecutrix are of the same village) on the same very day around 1.00 p.m., to enquire into the complaint lodged by the mother of the prosecutrix. As per the

complaint of the mother of the prosecutrix, the appellant had hurled abuses at her and her daughter (the prosecutrix) on 12-10-1999 and had also intimidated them, and therefore, they apprehended danger to their lives. The police on reaching the village on 13-10-1999 took the appellant into custody and carried him to Police Station, Barsar where he was kept in detention for the night and produced before the S.D.M., Barsar on the next following day, i.e. 14-10-1999.

7. The prosecution examined one Anil Kumar Head Constable PW-14 who enquired into the report lodged by the mother of the prosecutrix with respect to the incident of 12-10-1999. The witness was to fact examined by the prosecution to prove some documents relating to the case in hand. However, in the cross-examination by the appellant, this witness admitted that on 13-10-1999 he went to the village of the parties at 1.00 p.m. and arrested the appellant on that very day at 1.00 p.m. He also stated that the appellant remained in his custody up to 14-10-1999, when he was produced before the S.D.M. and was released on his furnishing bonds as ordered by the S.D.M. The witness was re-examined/cross-examined by the learned Public Prosecutor (it is not made out from the record whether it was re-examination or cross-examination or whether the permission of the Court had been obtained for such re-examination/cross-examination). In the course of such re-examination or cross-examination, whatever it was, the witness no doubt stated that he did not remember the exact time of the arrest of the appellant, but that would not make much difference, because besides the witness himself stating in the cross-examination by the defence that the appellant was arrested at 1.00 p.m. on 13-10-1999 and released on the next following day, there is the testimony of the mother of the prosecutrix, namely PW2 Rattan Devi, who in the cross-examination by the defence categorically stated that she went to the Police Station, to lodge the report pertaining to the incident of 12-10-1999 at 12.00 noon and that on the same day the police reached the village at 1.00 p.m. and arrested the appellant around the same time, i.e. 1.00 p.m. She has also stated that the appellant was taken to the Police Station by the police and was released on the next following day, i.e. 14-10-1999.

8. The testimony of PW 14 Anil Kumar Head Constable and PW 2 Smt. Rattani Devi, the mother of the prosecutrix, with respect to the arrest of the appellant on

13-10-1999 in connection with the incident of 12-10-1999 and his release on the next following day, is further strengthened by the documents pertaining to the inquiry into the incident of 12-10-1999 as also the proceedings held before the S.D.M. under Section 107/151 of the Code of Criminal Procedure, in connection with the said incident. The documents are; the report, copy Ex. D-3, which PW 2 Rattani Devi lodged with the police on 13-10-1999 at 12.00 noon, calendar Ex. D2, which was submitted to the S.D.M. (the same is dated 13-10-1999) and the order of S.D.M. dated 14-10-1999, Ex. D-8. pursuant to which the appellant was released from custody on his furnishing bonds.

9. Looking to the aforesaid evidence, which we have no reason to disbelieve, we have no hesitation to hold that the plea of alibi raised by the appellant stands established according to the requisite standard of proof, provided in Section 103 of the Indian Evidence Act.

10. The above stated position apart, we also find some deficiencies in the evidence of the prosecution for which there is no explanation. The prosecutrix was medically examined on 18-10-1999, i.e. to say five days after the alleged occurrence. The doctor though noticed that the hymen was torn and there was small laceration and congestion around the hymen and also there was linear laceration posteriorly extending towards fouchctte, which had not completely healed, yet he did not give any opinion about the probable duration of the injuries. In the absence of such an evidence it cannot be said that the aforesaid injuries were sustained by the prosecutrix at or around the time of the alleged incident of rape. Thus the corroborative medical evidence is deficient. It has come in the evidence that the parties are not having cordial relations. The mother of the prosecutrix Smt. Rattani Devi though denied, in her deposition as PW2, that there were disputes between the parties and such disputes were the subject-matter of litigation, yet in her statement before the S.D.M. copy Ex. P-7, it is recorded that she had filed a case against, the appellant which was pending in a civil Court at Hamirpur. She also got recorded in her statement Ex. D-7 made to the S.D.M. on 4-8-2000 that the proceedings (under Section 107/151 of Cr. P.C. before the S.D.M.) had been initiated on her complaint but after that the appellant had not indulged in any act or conduct similar to the one which led to the making of the

report against him. She did not state before the S.D.M., while making the aforesaid statement that after the lodging of the complaint by her the appellant had committed the alleged heinous act of rape, on her daughter, who was mentally deficient.

11. Also there is delay of five days in lodging the report with the police. No explanation for this delay has been offered. Now if the mother of the prosecutrix could have gone to the Police Station on 13-10-1999 in the company of the office bearers of the Panchayat, as is made out from the report Ex. D-3, which she had lodged with the police, to report a petty incident that took place on 12-10-1999, there could probably have been no explanation for the delay in reporting the incident, in question, and that is why no explanation has been offered.

12. The prosecutrix has not been examined. She was produced in the trial Court but the learned trial Judge did not record her statement by observing that she did not understand the sanctity of oath. If the prosecutrix was not in a position to understand the sanctity of oath, her statement could have been recorded without oath. It is not understood why the learned Public Prosecutor did insist upon the recording of prosecutrix statement without oath.

13. Considering the above stated position particularly the fact that the plea of alibi taken by the appellant stands established, we accept the appeal, set-aside the conviction and the sentence of the appellant for the offence under Section 376 of the Indian Penal Code, as awarded by the learned trial Court vide judgment dated 27-9-2003 and acquit the appellant of the said charge. The appellant being in custody is ordered to be set free at once in case his custody is not required in some other case.