

State of H.P. Vs. Surinder Kumar.

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Court : Himachal pradesh

Decided On : Dec-21-2010

Judge : R.B. Misra, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 378(3), 154; Indian Penal Code (IPC) - Section 302

Appeal No. : Cr. Appeal No. 23 of 2001

Appellant : State of H.P.

Respondent : Surinder Kumar.

Advocate for Def. : Mr. Neeraj Sharma, Adv.

Advocate for Pet/Ap. : Mr. R.K. Sharma; Mr.Rajinder Dogra, Adv.

Judgement :

1. The present Criminal Appeal has come up for adjudication after the grant of leave to appeal under Section 378 (3) of the Code of Criminal Procedure in reference to judgment dated 27.9.2000, passed by Learned Sessions Judge, Una, H.P., in Sessions Case No.53 of 1999, acquitting the accused/respondent for the offence under Section 302 of the Indian Penal Code.
2. The prosecution case is that on receiving telephonic message on 21.9.1999, that one boy has died by drowning into the well in Chattara, SI Surinder Sharma along with other police officials reached to the spot, where Telu Ram gave his

statement under section 154 Cr.P.C. that on the day of incident, at about 3.30 P.M., when he was cutting grass on the grass cutting machine in his courtyard of his house, at that time, he noticed accused/respondent Surinder alias Kaku was going with his son, aged about 3 years, subsequently he threw his son in the well and on asking why he has thrown the boy in the well, accused told him that Sagar was his son he did what he wanted. At that time doctor, nurse from the nearby dispensary came to the spot and observed that child in the well was trying to save himself but thereafter he drowned down. The accused ran away from the spot. In the mean time, Ramesh, Danu and Jarnail etc. also came on the spot. FIR was lodged. After investigation, accused was charged for the aforesaid offence.

3. In order to prove its case, the prosecution examined as many as 22 prosecution witnesses, whereas, the accused through his statement under Section 313 of Cr.P.C., has denied the prosecution case, however, in his statement under Section 313 Cr.P.C., in response to the query, as 'has he anything else to say? Accused stated that I and my wife Monika were having cordial relation. I never threw his son in the well. On that day, I was going to dispensary of the village as I was ill when I heard that my son had fallen in the well, as the well was not covered and the boundary of the well was very small. The statement of the accused under Section 313 of Cr.P.C., indicates that at the time of incident, accused/respondent at least was present very closed to the place of occurrence.

4. PW.6 Telu Ram, though lodged the complaint under Section 154 Cr.P.C., but resiled from his earlier statement. PW.6 has stated that on 21.9.1999, at about 3.30 P.M., when he was cutting grass in the courtyard of his house, he heard noise from the well. He stopped the machine and went to the well and observed that one small child was drowning in the well. In the mean time, many other persons came on the spot and accused also reached on the spot, then he came to know from the accused that his son had fallen in the well. From testimony of PW.6 (Telu Ram) made in examination-in-chief, it is also the case that though he has resiled from the statement made under Section 154 Cr.P.C., subsequently, though declared hostile, however, he has indicated that accused also reached on the spot and PW.6 came to know from the accused that his son had fallen in the well. PW.6, in cross-examination, has stated that complainant (Ex.PF) made under

Section 154 Cr.P.C. was signed by him. PW.6 has also stated that accused came from the side of dispensary and had slapped the accused and told him why he was not taking the child by holding his hand. PW.6 Telu Ram also stated that Ramesh, Danu and Jarnail of his village, Doctor and nurse from the dispensary also reached on the spot. As per testimony of PW.6, made in cross-examination, he never saw the accused after child died on the spot. According to PW.6, everybody was saying that accused had fled away. In view of the testimony of PW.6, made in cross-examination, accused never met him after 8-10 days after the occurrence. Telu Ram (PW.6) very categorically indicated in his cross-examination, that accused was keeping away from his house. Even PW.6 has been declared hostile, but he is the author of the complaint under Section 154 Cr.P.C. and according to PW.6, presence of the accused on the spot at the time of incident is proved which is corroborated in reference to the statement of accused under Section 313 Cr.P.C. In view of testimony of PW.6 when accused came from the side of dispensary, PW.6 slapped him and told him why he was not taking the child with him by holding his hand, such statement is another corroborative material proving the presence of the accused on the spot besides the disinterest and unusual conduct of the accused towards his own son, indicating that accused was responsible for killing his son/ Sager.

5. PW.1 Head Constable Kulwant Rai is a formal witness. PW.2 Dr.Vipin Chander Sharma has examined victim / (Sagar) and opined that deceased had died due to drowning. As per testimony of PW.2, there was no external mark of injury on his person.

6. PW.3 Dr.R.K.Jerath has stated he was deployed as Medical Officer in Ayurvedic Dispensary. On 21.9.1999 at about 3.30 P.M., when he was sitting in his dispensary, he heard noise as if something has fallen in to the well and also noticed a sound as a pitcher has fallen in to the well and when PW.3 reached near the well after about 2 minutes, he saw one small child in the well with mouth downwards, moving his hands and legs, however, within 4-5 minutes, that child went inside down the water, 5-10 persons were near the well when PW.3 reached on the spot. PW.3 has not observed any person slapping to any person. PW.3 however was declared hostile. From the testimony of PW.3, death of Sagar /

(victim) by drowning is proved, as the incident was witnessed by PW.3 as well as 5-10 persons present on the well when he reached there. The presence of PW.3 at the time of incident is also proved as he came to the well after 2 minutes after hearing the noise 25 meters away from his dispensary and according to PW.3, there are bushes and house of Telu Ram (PW.6) adjoining the well. As per testimony of PW.3 in crossexamination, he never inquired from any person that who had thrown the child in the well and how the child fallen in the well, as he was not having any personal interest in the child.

7. PW.4 Smt. Swarni Devi, Pradhan Gram Panchayat for the last 4 years, has stated that in her presence police took into possession the dead body of Sagar. In view of testimony of PW.4, dead body of Sagar was identified by Naveen Kaushal, maternal uncle of the deceased, on the spot. PW.4 has further stated that dead body was taken out from the well on the third day of the occurrence. The dead body could not be taken out for two days as the water in the well was quite deep. In view of the testimony of PW.4, she did not see the accused in the village during those 2-3 days after the occurrence, as he has fled away.

8. PW.5 Sh.Arbind Arora, he took the photographs of the dead body. PW.7 Sh.Jarnail Singh has stated that well in Chatara village was 50 yards from his house and he knew accused Surinder alias Kaku since past. The house of Telu is adjoining the well. After hearing the noise at about 3.30 P.M., on 21.9.1999, he went to the spot, but he did not see the accused on the spot, whereas, the persons present on the spot were saying that accused had thrown his son (Sagar) into well. PW.7 has however, stated that he never saw Kaku or the child. Telu and his wife were present on the spot. As per testimony of PW.7, Telu Ram (PW.6) told that accused had thrown his son into the well. In view of testimony of PW.7, he never saw accused in the village after the incident, whereas, police had tried and made continuous efforts to bring out the dead body of deceased Sagar which could be taken out from the well on the third day. According to PW.7, if one wants to go to the well from the house of accused, one has to pass through the courtyard of Telu Ram (PW.6). According to PW.7, the persons present on the spot were saying that accused had thrown his son into well, however, PW.7 could not specifically mention the name of any person, who told such thing.

9. PW.8 Sh.Ramesh Chand has stated that when on reaching to the spot, he neither saw the person who threw the child in to well nor he was child into well. PW.8, was declared hostile, as such nothing could be drawn from his testimony.

10. PW.9 Sh.Jaswinder Singh has stated that when he went to the well he saw the dead body of a child and neither accused Kaku was present on the spot nor any talk took place between Kaku and Telu. PW.10 Sh.Rakesh Kumar has stated that he informed the Fire brigade and when went to the spot, many persons were present there. PW.10 was also declared hostile. PW.11 Sh.Karam Chand joined investigation and had witnessed the dead body of Sagar when taken out from the well. PW.12 Sh.Surjit Kumar stated that his in-laws' house is in village Chatara, when he went to the village on 23.9.1999 rumour was going on that a child had drowned into well. PW.12 had witnessed the dead body while it was taken out from the well with the help of rope and iron hook. PW.13 Sh.Pawan Dev Patwari, had measured the boundary of the well and prepared the site plan of the place. PW.14 Krishan Singh, Inspector after completion of the investigation prepared the challan and presented the same in the Court. Testimony of PW.15 Sh.Vipin Kumar, is of no relevance as he has been declared hostile. PW.16 Sh.Rajendera Kumari, Ward Panch had witnessed the demarcation of the well. PW.17 Smt.Monika Khanna, the mother of the victim/deceased was also declared hostile. PW.17 in cross-examination has stated that there were 10-15 persons on the well when she reached there. Whereas, PW.17 remained on the well for a period of half an hour. Some more persons also came on the spot, Telu Ram or his wife Salvinder Kaur were also present on the well. PW.17 was declared hostile. 11. PW.19 Sh.Gurpal owner of a medicine shop at Chatara, came to know on 21.9.1999 that one child had fallen into well and when he went to the well many persons were present there. This witness was declared hostile as in cross-examination, PW.19 has stated that he did not see Surinder alias Kaku on the spot.

12. PW.20 Sh.Naveen Kaushal has stated that his sister Monika married to accused Surinder, however, he was declared hostile. PW.21 Surinder Sharma, SubInspector while posted as I.O. in Police Station Sadar, Una, received telephonic information on 21.9.1999 at about 3.45 P.M., from Fire brigade Station

and he was deputed alongwith police officials to village Chatara vide D.D. No.17 (Ex.DA). PW.21 reached on the spot at 4.15 or 4.30 P.M., at that time 50-60 persons were present on the well at Chatara and one boy, namely, Sagar was said to have been thrown into well by his father Kaku alias Surinder / accused. The statement of Telu Ram under Section 154 Cr.P.C., was read over to him and he has put signature on that. When PW.21 / Investigating Officer searched for Kaku alias Surinder, a separate team, under the supervision of D.I Sukhdev, was sent for searching the accused, but despite search he could not be traced out and remained underground for 7-8 days and ultimately accused was arrested on 29.9.1999 i.e after 8 days of the occurrence. Site plan (Ex.PW) was prepared and statements of Salvinder Kaur (Ex.PT), Gural Chand (Ex.PU), Naveen Kaushal (Ex.PV), Jarnail Singh (Ex.PH), Ramesh Chand (Ex.PJ), Jaswinder Singh (Ex.PK) and Rakesh Kumar (Ex.PL) were recorded. In view of testimony of PW.21, endeavour was made to recover the dead body from the well, however, the dead body recovered on third day, was taken into possession vide memo (Ex.PE) and the same was identified by PW.20 Naveen Kaushal and Chaman Lal. Statement of Dr.Jerath (Ex.PD) was also recorded by PW.21. During the investigation PW.21 has found that accused Surinder alias Kaku killed the child by throwing him into well due to dispute with his wife. In cross-examination, PW.21 has stated that he was told by Telu Ram only that accused Surinder threw his son into well. The other persons were also telling the same thing that Telu Ram had seen the occurrence.

13. PW.22 Rikhi Ram Guleria, Sub Inspector, in support of the prosecution case has stated that he recorded the supplementary statement of Telu Ram (Ex.PG) and statement of Vipin Kumar (Ex.PP).

14. On analysis of the prosecution witnesses and materials on record, it appears that the prosecution witness, mainly Telu Ram (PW.6), has seen the occurrence but was declared hostile and other prosecution witnesses were also declared hostile, whereas, PW.6 had made a complaint under Section 154 Cr.P.C., recorded as (Ex.PF), which he never denied before the Court. There is nothing that the statement of PW.6 was recorded under coercion, misrepresentation or under any influence or police pressure. PW.6 has admitted his signatures and his

statement made on complaint under Section 154 Cr.P.C. Even though he resiled subsequently the contents thereof, but however, the fact stands proved by the substantive evidence of the Investigating Officer. Importantly, the statement of the Investigating Officer goes un-rebutted. Police has no reason to falsely implicate the accused. We also note that even the PW.3 admits that the dispensary was just at a distance of 25 meters from the site of crime, though he has admitted to have signed the documents, as a Government servant, therefore, he was duty bound to disclose true facts before the Court. Testimony of PW.6, to the extent inspires confidence, can be relied upon and could be considered to hold the accused/respondent guilty of the offence under Section 302 IPC. Statement recorded under Section 154 Cr.P.C. duly proved, can be relied upon to hold the accused guilty with respect to the charged offence. In a natural course why would a father accused not take prompt action for rescuing his son, who had fallen into the well? Presence of father accused at relevant time on the spot is not in dispute but escaping from the spot of occurrence, sufficient circumstantial evidence indicates to prove guilt against him. From the inquest report also it is evident that father accused was not present at the time when the body was recovered from the well. Now such conduct of father / accused-respondent is highly unnatural. Father / accused also did not participate in performing last rights of his son, as such; his absence at that time to is sufficient indicative to hold him guilty of the offence under Section 302 IPC.

15. In the facts and circumstances of the present case, the prosecution has been able to prove its case on the basis of circumstantial evidence, as accused Surinder alias Kaku, on the fateful day, in view of his statement under Section 313 Cr.P.C., was going to dispensary alongwith his wife for getting medicine for his ailment. In view of testimony of PW-7 Jarnail Singh, PW.6 Telu Ram had seen the presence of accused/respondent on the spot and PW.6 has also slapped him when he was going from the side of dispensary and the accused seen on the spot, had ran away from the spot and the police went in search of him and had arrested him on 29.9.1999. As such, the unnatural conduct of accused gives clear indication that when he was present on the spot and heard about the occurrence but had escaped from the spot to save him from his misdeed, which he had committed by throwing his son into the well. Despite the fact that most of the prosecution

witnesses have not supported the prosecution case, but presence of accused on the spot is proved and his conduct is conclusive that he was never interested to save his own son and had shown his unusual behaviour, being father of the victim/deceased/ Sagar. In these circumstances, the circumstantial evidence reveal that there was none except the accused/ respondent Surinder alias Kaku, who has thrown his son Sagar into the well, consequent upon which victim / Sagar drowned into the well and had died.

16. In our considered view, the testimonies of prosecution witnesses and materials on record have not correctly been appreciated. The finding given by the learned Sessions Judge is not legally correct, therefore, the same is set aside. In our considered view the prosecution has been able to prove its case, beyond reasonable doubt. Accordingly, accused/respondent Surinder alias Kaku is held guilty of offence punishable under Section 302 of the Indian Penal Code. However before awarding sentence to the accused/respondent, the accused has to be heard on quantum of sentence. Therefore, non bailable warrants are issued to secure the presence of the accused before this Court returnable for 23rd February, 2011.

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