

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

Cr. Appeal No.655 of 2001

Date of decision: 30.9.2008

State of H.P.

... Appellant

Versus

Anil Kumar

... Respondent

Coram :

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?¹

For the appellant: Mr. Rajesh Mandhotra, Deputy Advocate General.

For the respondent: Ms. Jyotsna Rewal Dua, Advocate.

Deepak Gupta, J (Oral).

This appeal is directed against the judgment dated 23.3.2001 passed by the learned Additional Chief Judicial Magistrate, Paonta Sahib, in Criminal Case No. 118/2 of 1999 whereby he has acquitted the accused on having committed an offence punishable under Section 354 of the Indian Penal Code.

The prosecution case in brief is that the complainant (named withheld) filed an application before the Deputy Superintendent of Police (Dy.S.P), Paonta Sahib on 31.5.1999 alleging that on 30.5.1999 at about 4.30 pm, she had gone

¹Whether reporters of Local Papers may be allowed to see the judgment? Yes.

to answer the call of nature in the land adjoining to her house. Accused came and pounced upon her and tried to mishandle her. The complainant raised a hue and cry upon which her younger sister and one Suraj came to the spot but in the meantime, the accused fled away. On the basis of the complaint, FIR Ex.PW5/B was registered and the case was investigated. After investigation, a challan was filed in the trial Court.

In the application, the name of the person who came to the rescue of the complainant is mentioned as Suraj. However, Suraj was not examined in Court. The prosecutrix while appearing in Court states that the name of the person was Surat Singh. There is no explanation with regard to the change of the name from Suraj to Surat Singh.

In the complaint, there is no mention of the fact that the accused caught hold of the complainant from the waist but in Court, the complainant stated this fact. There is no explanation as to why the complaint was not lodged on 30.5.1999 itself and why the complainant waited for 24 hours to lodge the complaint.

In the complaint, there is no allegation that the accused tried to out-rage the modesty of the complainant. While making statement in the witness box, the complainant

has made various improvements. Admittedly, there are 6 – 7 houses near the place of occurrence. There is no explanation as to why no person from these houses was associated with the prosecution.

Interestingly, PW2 Veena Devi who purported to support the statement of the complainant states that it was one Ilam Singh alias Isham who was present at the spot. This version is totally different from the statement of the complainant that the person was Suraj later mentioned as Surat.

Keeping in view the aforesaid discrepancies in the statements of the witnesses and the fact that the identity of the alleged independent witnesses has not at all been established, the learned trial Court was right in acquitting the accused.

I find no error in the judgment of the learned trial Court. The appeal is accordingly dismissed.

September 30, 2008

(Deepak Gupta),J.

s.