

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

Cr. Acq. Appeal No. 19/2006

Date of decision:27.02.2015

State of J&K	vs.	Suram Singh & anr.
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Coram:

Hon’ble Mr. Justice Janak Raj Kotwal, Judge.

Appearing counsel:

For appellant (s): Ms. Meenakshi Bhuttyal, GA.

For respondent(s): Mr. P.N.Raina, Sr. Advocate with
 Mr. Saquib Hussain Butt, Advocate.

(i)	Whether to be reported in Press, Journal/Media:	Yes/No
(ii)	Whether to be reported in Journal/Digest:	Yes/No

1. State is in appeal against judgment of learned Sessions Judge, Udhampur dated 30.11.2005, whereby respondents, Suram Singh and Romesh alias Sonaki (hereinafter to be referred as A-1 and A-2 respectively) after their trial in Session Case No.47 have been acquitted of Charge under sections 376(2)(g), 366 and 342 RPC.
2. Heard. I have perused the record.
3. Prosecution case as it was set up before the trial court, briefly, is that on 26.02.2001 Sansar Singh (PW-1) lodged verbal information at Police Post, Tikri. He reported that he is a Post and Telegraph Department

employee and posted at Prem Nagar, Doda. On 25.02.2001 at 10 AM his son Sohan Singh informed him telephonically that A-2 and Rajinder Kumar have kidnapped his daughter/the prosecutrix, age 15/16 years, from his house at 5 AM in the morning. On receiving this information, he came to his house. He reported further that his daughter has not been traced and made a request for action in the matter. The information was entered as report No.3 in Daily Diary of the Police Post and Officer Incharge of the Police Post submitted copy of the report to Police Station, Katra recommending registration of offences under sections 366, 363 RPC. FIR No. 42/2001 thus came to be registered at Police Station, Katra on 27.02.2001 at 9.30 AM.

4. Incharge Police Post, Tikri investigated the case. As per the prosecution case, in the course of investigation the Investigating Officer (I.O.) recovered the prosecutrix from the house of A-2 vide a recovery memo (Ex. PW SS-5) and also prepared sketch map of the place of recovery (Ex. PW PC). On the same day, the I.O. produced the prosecutrix for her medical examination before PW-Dr. Suman Nargotra and obtained the medical certificate ((Ex. PW -SN). He prepared the sketch map of the place of occurrence (EX.PW PC-I). The I.O. also got statement of the prosecutrix recorded

in terms of section 164 Cr.P.C. and on the basis of her statement added offence under section 376(2)(g)/109 RPC in the case. I.O. found in the course of investigation that Suram Singh/A-1 was also involved in kidnapping of the prosecutrix. After completion of the investigation, the I.O. preferred charge sheet under sections 376(2)(g), 366, 363, 342/109 RPC against A-1 & A-2 and under sections 366, 363, 342 RPC against Rajinder Kumar alias Sonu (hereinafter to be referred as A-3) in the Court of learned Chief Judicial Magistrate, Udhampur, which after committal came up for trial before the learned Sessions Judge, Udhampur.

5. Learned trial Court framed charges under sections 376(2)(g), 366 & 342 RPC against A-1 & A-2 and under sections 376(2)(g), 366, 109 & 342 RPC against A-3. They all pleaded not guilty and claimed to be tried. Prosecution, besides examining the prosecutrix as PW-2, examined Sansar Singh (PW-1), Dr. Kuldip Sharma (PW-3), Tara Singh (PW-4), Bimla Devi (PW-5), Prem Chand (PW-6), Suram Chand (PW-7), Dr. Suman Nargotra (PW-8), Kamlesh Kumar (PW-9) and I.O Prem Chand (PW-10) as witnesses. Learned trial court recorded statements of the accused and after hearing the prosecution and the defence under section 273 Cr.P.C. acquitted A-3. A-1 and A-2 refuted the evidence against them and pleaded false implication by PW-1 on

account of rivalry over land etc. Defence produced three witnesses namely, Vishma Nath, Om Parkash and Bodh Ram. Learned trial court after appraisal of evidence and record acquitted A-1 & A-2 holding that no offence, as charged against them, has been made out and further that not only the entire prosecution case is doubtful but it appears to be false and the accused persons appear to have been framed up in the case. **Hence this appeal.**

6. Ms. Meenakshi Bhuttyal, GA argued that the judgment rendered by the learned trial court is against the facts of the case and law. The trial court has not properly appreciated the prosecution evidence. Testimony of the prosecutrix, which stands corroborated by the proof of recovery of the prosecutrix from the house of the A-2, has not been given its due importance and weight, submitted Ms. Bhuttyal.
7. Per contra, Mr. P. N. Raina, learned Senior Advocate, supported the judgement. He questioned the evidence in regard to the recovery of the prosecutrix by the I. O. and sought to make out that factum of recovery was concocted by the I.O. He questioned the credibility of the prosecutrix.
8. I have read and reappraised the entire evidence produced by the prosecution before the learned trial

Court. I have perused the impugned judgment in comparison with the prosecution evidence and record of the case and having done so, I find no reason for differing with the conclusion arrived at and the acquittal recorded by the learned trial Court. For the reasons to follow, I cannot but hold that learned trial judge has rightly appreciated and sifted the evidence, in particular the testimony of the prosecutrix, reminding himself well about the evidentiary value of and importance to be given to testimony of prosecutrix in a case of sexual harassment to her, even if not corroborated by other evidence.

9. The important, rather the star witness, to the occurrence insofar as it relates to allegation of kidnapping of the prosecutrix by A-1 & A-2 assisted by A-3 and recovery of the prosecutrix could have been Sohan Singh, the brother of the prosecutrix/son of the informant (PW-1), who, as per the first information report, had telephonically informed PW-1 on 25.02.2001 at 10 AM about the kidnapping of the prosecutrix.. Prosecution, however, did not produce Sohan Singh as witness before the trial Court and in the result possibility of leading direct evidence in regard to the allegation of kidnapping of the prosecutrix by A1 or A2 and recovery was not availed before the trial Court. As per the information lodged

by PW-1, his son Sohan Singh had informed him telephonically that Romesh and Rajinder Kumar (A-2 & A-3) have kidnapped the prosecutrix. Sohan Singh evidently was having the first knowledge as regards the act of kidnapping by A-2 & A-3 and prosecution's failure in producing him before the trial court, besides causing loss of valuable evidence, causes a serious doubt about the veracity of the prosecution version as question arises as to why the prosecution did not produce the brother of the prosecutrix in the witness box.

10. The other important factor in regard to the whole prosecution story could have been the proof of recovery of the prosecutrix from the house of A-2 as according to the prosecution version, recovery memo (EX.PW-SS 5) and sketch map of the place of recovery (EX.PW-PC), the I.O. is said to have recovered her from the house A-2. Prosecution, however, has created a mess in regard to the factum of recovery of the prosecutrix and it appears as if the prosecution has sought to credit itself with an act which it did not perform.
11. It is seen that PW-1 lodged the First Information Report about the occurrence at Police Post, Tikri on 26.02.2001 at 9.30 AM, it was entered as report No.3 (EX. PW-SS1) in the Daily Diary of the Police Post and

on its basis FIR came to be registered at Police Station, Katra on the next day viz. 27.02.2001 at 9.30 AM. PW-I, while lodging the report had stated that up to that time the whereabouts of the prosecutrix were not known to him meaning thereby that up to the time of lodging of the report the prosecutrix was not recovered. I.O. PW-Prem Chand, Officer Incharge Police Post, Tikri, in his testimony before the trial Court has proved the recovery memo and the sketch map of the place of recovery in his chief examination. In cross-examination he has stated that he had gone on spot and conducted the investigation on 26.02.2001 even though the FIR was registered on 27.02.2001. The recovery memo on its perusal and in view of the I.O.'s testimony would show that the I.O. recovered the prosecutrix from the bed room of the house of A-2 on 26.02.2001. This in turn would show that as per the prosecution version, prosecutrix was recovered by the I.O. on 26.02.2001 after lodging of the report by PW-1 at Police Post, Tikri but before formal registration of the FIR at Police Station, Katra on 27. 2. 2001.

12. Contrary to the prosecution version in regard to recovery of the prosecutrix, PW-1, who is also a witness to recovery memo, in his testimony before the trial court has stated that on getting the telephonic information on 25.02.2001 he reached his house on

the same day at 8 PM. On the same day, Suram Singh/A-1 told him telephonically that he should not worry as his daughter was with them. His co-villagers immediately went to the house of Suram Singh and brought his daughter to his house. He did not accompany them. He enquired from his daughter and lodged report on the next day. Contrary to prosecution version, according to the prosecutrix her brother Sohan Singh had brought her from the house of A-1. Contextually, I may also refer to the testimonies of Tara Singh (PW-4) and Prem Chand (PW-6), who are the other marginal witnesses to the recovery memo. According to PW-4 he had accompanied the informant for lodging the report and that the prosecutrix had been recovered by the co-villagers from the house of A-1 prior to coming on spot of the police, which came on spot the day next after the recovery. In that PW-4 while admitting his signature on the recovery memo has expressed ignorance about its contents and prosecution, therefore, declared him hostile. PW-6, however, in his testimony totally denied his presence at the time of recovery of the prosecutrix from the house of the accused and has stated in the cross-examination that his signature was obtained at the Police Post.

13. It is, thus, noticed that contrary to prosecution version that I.O. had recovered the prosecutrix from the bed room of the house of A-2 on 26.02.2001, as per PW-1 and PW-4, co-villagers had brought the prosecutrix from the house of A-1 on 25.02.2001 , that is, prior to lodging of the report and coming on spot of the police. Prosecution version, therefore, is liable to be rejected. Not only that, it is not even possible to believe and hold on the basis of testimonies of PWs-1 & 4 that the prosecutrix had been inside and was brought from the house of A-2 as PW-1 has stated that he did not accompany the co-villagers and there is nothing in the testimony of PW-4 that he too had accompanied them at the time of bringing the prosecutrix from the house of A-2. It can be said that prosecution did not make serious effort to prove by leading reliable and sufficient evidence that the prosecutrix was ever recovered from the house of A-1 or A-2 prior to or after lodging of the report and apparently created mess by making it to believe that she was recovered by the I. O. from the house of A2.
14. The very lodging of the report by PW-1 implicating A-1 and A-3 spawns a doubt about veracity of the prosecution case in backdrop of evidence about existence of a dispute between PW-1 and A-1 and A-2 in regard to right of passage of the former through the

land of the latter. PW-1's say at the time of lodging the report that whereabouts of the prosecutrix were not known up to that time indicates a design either in the mind of PW-1 or that of the I.O. to create evidence about recovery of the prosecutrix from the house of A-1 or A-2.

15. The only evidence calling for appreciation by the learned trial court was the uncorroborated testimony of the prosecutrix and so is the evidence before me. Testimony of the prosecutrix is uncorroborated indeed because, as pointed out above, the sole possible witness to the allegation of kidnapping and recovery of the prosecutrix from the house of A-1 has not been produced and evidence in regard to recovery of the prosecutrix from the house of A-2 by the I. O. has failed. As per the medical evidence rendered by Dr. Suman Nargotra (PW-8), who had examined the prosecutrix on 26.02.2001 at 1.15 PM, there was no mark of violence or injury on her external genitals, no spermatozoa were found on H/P study of vaginal smear of the prosecutrix and no definite opinion in regard to recent sexual intercourse was possible.
16. Learned trial court while informing itself about importance of the testimony of the prosecutrix in sexual assault cases, even if uncorroborated, found version of the prosecutrix full of doubts,

improbabilities and unworthy of credit. Learned trial court has given cogent reasons in recording its conclusion and rejecting the testimony of the prosecutrix. I cannot but agree with the view taken by the learned trial court though I would state, briefly, as to why the testimony of the prosecutrix cannot be relied upon.

17. Testimony of the prosecutrix is self contradictory. In her initial statement recorded by the trial court on 22.06.2001, she, while maintaining that she was lifted forcibly by A-1 & A-2 when she had come out of her house for urination at 5 AM and was first detained in the shop of A-2 and then in his house, did not state anything about commission of rape on her and rather stated that A-2 did not do any wrong to her. However, prosecution on that day got her statement deferred and in her statement at a later stage she stated that A-2 and A-1 committed rape on her one after the other. Explanation given by her that while making initial statement she was mentally disturbed is without any basis and has no substance to inspire confidence of court.
18. A-1 and A-2 are real brothers. According to the prosecutrix, she had been lifted forcibly by A-1 and A-2 and they had committed forcible sexual intercourse with her. It has come in the evidence that prosecutrix

that she had been lifted from a place which was just a few feet away from her house. According to her, A-1 and A-2 had first taken her to the shop of A-2 where they committed rape on her one after the other and after that A-2 lifted her from the shop to his house. It has also come in the evidence of the prosecutrix that her four uncles, namely, Jeet Singh, Kamal Singh, Suram Singh and Janak Singh, who all are married and have children, reside in the adjoining rooms and all have a common compound. All of them except Kamal Singh were present in their houses on the day of occurrence. Her brothers Sohan Singh and Dharam Singh and sister Bholi Devi, who are all elder to her, were also present in the house. It has also come in her evidence that on 25.02.2001 there was 'mundan' ceremony of the son of A-1. Sketch map of the place of occurrence (EX.PW-PC1) prepared by the I.O. would also show that the place of occurrence is located within a populated place.

19. The very sitting at and around the crime scene would sound it highly incredible and fanciful to say that a grown up girl viz. the prosecutrix could have been lifted forcibly, detained in the shop and after sometime lifted to another place. Absence of any mark of violence on the person of the prosecutrix would create a serious doubt about truthfulness of her version both

in regard to forcible lifting and forcible sexual intercourse, which cannot be explained by prosecutrix's say that she could not raise any alarm as accused had gagged her mouth.

20. False implication of A-3 by mentioning his name while lodging the report and her complete exoneration by the prosecutrix also creates serious doubt about truthfulness of the prosecution version coupled with attempt on the part of the informant and the I.O. to show that recovery had been effected from the house of the accused.
21. For all that said and discussed above, this appeal is without any merit and is dismissed.
22. Disposed of.

(Janak Raj Kotwal)
Judge

Jammu:
27.02.2015
Pawan Chopra