

State of Himachal Pradesh

v.

Sanjay Kumar

(Criminal Appeal No(s). 595 of 2016)

23 April 2025

**[Ahsanuddin Amanullah and
Prashant Kumar Mishra,* JJ.]**

Issue for Consideration

Whether the High Court was justified in setting aside the conviction and sentence of the accused-A1 u/ss.363, 366, 376 and 201 r/w s.34, IPC and accused-A2 u/s.201 r/w s.34 and acquitting them.

Headnotes[†]

Penal Code, 1860 – ss.363, 366, 376, 201 r/w s.34 – High Court set aside the conviction and sentence of accused-A1 u/ss.363, 366, 376 and 201 r/w s.34, IPC and accused-A2 u/s.201 r/w s.34 and acquitted them – Correctness:

Held: Acquittal not interfered with – FIR was lodged regarding the abduction of the Prosecutrix, there is no allegation of rape in the FIR – There is material contradiction in the statement of the Prosecutrix as to the date of commission of rape – Since A1 was not with the Prosecutrix in the night of 31.03.2012 when she was in the house of co-accused-A2 and there is no allegation of rape against A2 in whose house she stayed on the next night, the High Court rightly held that the commission of rape by A1 is not proved – View taken by the High Court is plausible considering the evidence on record – Prosecution failed to establish the charges against the accused. [Paras 9-11]

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Commission of rape not proved; Kidnapping; Acquittal not interfered with; Material contradiction in statement of prosecutrix;

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No allegation of rape in the FIR; Section 164 of Criminal Procedure Code, 1973; Date of commission of offence; Medical evidence; DNA profile.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 595 of 2016

From the Judgment and Order dated 28.12.2015 of the High Court of Himachal Pradesh at Shimla in CRLA No. 4246 of 2013

With

Criminal Appeal No. 596 of 2016

Appearances for Parties

Advs. for the Appellant:

Divyanshu Kumar Srivastava, Yash Jain, Ravi Bakshi, S. Gowthaman.

Advs. for the Respondent:

Sumesh Dhawan, Ms. Ankita Bajpai, Mrs. Vatsala Kak, Ms. Kholi Rakuzhuro, Mrs. Priya Puri, Raghav Dembla.

Judgment / Order of the Supreme Court**Judgment**

Prashant Kumar Mishra, J.

1. These appeals would call in question, the impugned Judgment of acquittal dated 28.12.2015 passed by the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 4246 of 2013 and Criminal Appeal No. 4273 of 2013 setting aside the conviction and sentence of accused/Sanjay Kumar under Sections 363, 366, 376 and 201 read with Section 34 of the Indian Penal Code,¹ and accused/ Chaman Shukla under Section 201 read with Section 34 IPC imposed by the Sessions Judge, Bilaspur (H.P.) in Sessions Trial No. 8/7 of 2012 arising out of FIR No. 47 of 2012 dated 31.03.2012, registered at P.S. Barmana, District Bilaspur (H.P.).

¹ (for short, 'IPC')

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2. The prosecution case in brief is that on 30.03.2012, Parkash Chand (PW-5), father of the prosecutrix, was addressing religious story ('Katha') in Sri Naina Devi temple at Sohra Buins and his wife Shanta Sharma along with her daughter Tanu Sharma (PW-2) and the prosecutrix aged about 14 years (PW-13) also went to listen the Katha. During Katha, PW-2 asked the prosecutrix to take her son, aged about two years, to bed for sleeping in a room of the temple. After a long time, when the prosecutrix did not return, PW-2 went to the room where she found her son sleeping, but did not find the prosecutrix in the room. Upon this, PW-2 informed her in-laws and others and started searching for the prosecutrix but remained unsuccessful. They raised a suspicion that the accused/Sanjay Kumar had kidnapped the prosecutrix. PW-2 called her husband Narender Shail (PW-1) who made a complaint at the Police Station, Barmana, District Bilaspur and on that basis, FIR was registered.
- 2.2. On 01.04.2012, accused/Chaman Shukla along with the prosecutrix went to the Police Station Rampur, District Shimla and informed that he had found her walking on the road at Narkanda on 30.03.2012 and brought her to his home. Upon production of the prosecutrix at Police Station, Rampur, a police party of Police Station Barmana, District Bilaspur along with relatives of the prosecutrix reached there and the prosecutrix was handed over to them by entering Rapat in the Rojnamcha at Police Station, Rampur. The accused/Sanjay Kumar was arrested on 04.04.2012 and the prosecutrix as well as accused/Sanjay Kumar were medically examined.
- 2.3. During the course of investigation, it was found that accused/Sanjay Kumar kidnapped the prosecutrix in his Alto Car bearing registration No. HP-24-8684 on 30.03.2012 and spent that night in the house of Jawala Devi (PW-6) at village Thaila Chakti, Tehsil Rampur, District Shimla where he allegedly committed rape on her. On the next day, the prosecutrix was kept in the house of accused/Chaman Shukla who threatened her to state that she came to Rampur of her own volition and further tried to mislead the investigating agency. PW-6 also handed over one shirt of the prosecutrix. Regarding the age of the prosecutrix, the investigating officer procured her birth certificate wherein her date of birth was recorded as 09.12.1997 which is corroborated with the family register. On 07.04.2012, the car was seized along with one mobile phone having sim of Vodafone. On 11.04.2012, the prosecutrix was produced before the Judicial

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Magistrate, Bilaspur where her statement under Section 164 Cr.P.C. was recorded.

- 2.4. On completion of investigation, chargesheet was filed and, in course of trial, the prosecution examined 21 witnesses in support of the charges. The accused pleaded not guilty but did not lead any evidence in defence.
- 2.5. On the basis of evidence brought on record during the course of trial, the Trial Court convicted the accused/Sanjay Kumar for the subject offences and sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 20,000/- and accused/Chaman Shukla to undergo simple imprisonment for 01 year against which they preferred appeals before the High Court. The High Court has set aside the above conviction & sentence and resultantly the Criminal Appeals preferred by the accused/appellants have been allowed by the impugned Judgment. Hence, these appeals.
3. We have heard learned counsel for the parties and perused the records. Learned counsel have taken us through the entire evidence on record.
4. Mr. Divyanshu Kumar Srivastava, learned counsel appearing for the appellant/State would mainly rely upon the statement of the prosecutrix to prove the allegations against the accused as the prosecutrix was taken away by the accused/Sanjay Kumar without any obstruction from Naina Devi temple because of prior acquaintance. He further submits that the prosecutrix is naturally the most important witness beside other circumstantial evidence and the High Court has erroneously discarded the version of the prosecutrix on its face value. Her statement must be appreciated in the background of the entire case. He would submit that the testimony of the prosecutrix inspires absolute confidence and is sufficient on its own to sustain the conviction.
5. *Per contra*, Mr. Sumesh Dhawan, learned counsel appearing for the respondents would submit that accused/Sanjay Kumar has been falsely implicated merely on suspicion of prior acquaintance with the prosecutrix whereas the prosecutrix had run away of her own will. He submitted that the prosecutrix had categorically stated that rape had been committed on her in the night of March 30, 2012, whereas the entries in DDR Ex. PW-21/A and PW-21/B establish

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that she was with the other accused Chaman Shukla on that night and basing such inconsistencies the Trial Court had acquitted the co-accused Lekh Ram, whereas, the respondents herein were ordered to be convicted. He further argued that allegedly the rape was committed in the house of PW-6 (Jawala), who did not support the version of the prosecutrix. He would further contend that it was the specific case of the prosecution that the police had traced the prosecutrix by following her mobile phone through telephone tower location, whereas no such details were produced during the course of trial which attracts adverse inference against the prosecution. It is further argued that no DNA examination was conducted to match the semen of the accused with the semen allegedly recovered from the clothes of the prosecutrix.

6. The Trial Court recorded a finding that the date of birth of the prosecutrix is 09.12.1997, therefore, she was less than 16 years of age when the alleged incident took place. It is also held that the accused-Sanjay Kumar was known to the family of the prosecutrix and taking advantage of the proximity, he enticed and induced her to sit in the vehicle and thereafter they went to Rampur. On the issue of commission of sexual intercourse, the Trial Court noted that PW-6/Jawala Devi having not supported the prosecution, the only statement on this issue was the statement of PW-13/Prosecutrix. On the basis of corroborative statements of PW-1/Narender Shail, PW-3/Babu Ram and the statements of PW-13/Prosecutrix, the Trial Court found that the Prosecutrix stayed for a night in the house of PW-6/Jawala Devi and coupled with the medical report, believed the prosecution version and convicted the accused/Sanjay Kumar for committing offence of rape whereas the accused/Chaman Shukla has been convicted for committing offence under Section 201 read with Section 34 IPC.
7. In the impugned judgment rendered by the High Court, after an elaborate discussion of the evidence on record, it is held that the prosecution has failed to establish the charges against the accused/respondents. The High Court observed that as per the prosecutrix the accused/Sanjay Kumar took her to Rampur in the house of PW-6/Jawala Devi on 30.03.2012 and during night he committed rape. The next evening accused/Sanjay Kumar took her to the house of co-accused/Chaman Shukla and had left her there and on the 3rd day i.e. 01.04.2012, some people including co-accused Lekh Ram from

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her village came to the house of Chaman Shukla and took her to the Police Station, Rampur and made a statement that she ran away from her house because her parents used to beat her. Accused/Chaman Shukla made her to make an incorrect statement and accused/Lekh Ram threatened her. Thereafter, Prosecutrix accompanied by accused/Chaman Shukla came to Police Station, Rampur and on the basis of her statement Daily Diary Report Mark-Z1 was entered. Her statement under Section 164 Cr.P.C was also recorded vide exhibit PW-13/A. In cross-examination, she admitted that she did not disclose anything to PW-6/Jawala Devi or her family members or even thereafter did not disclose anything to co-accused/Chaman Shukla and his family members, though she spent one night there. She admitted that she had not disclosed that the accused/Sanjay Kumar committed rape with her. Throughout her journey from Bilaspur to Rampur she did not inform to anyone that the accused/Sanjay Kumar had kidnapped her. She categorically admitted that accused/Sanjay Kumar committed rape with her at Thali Chakti and not at the house of the co-accused/Chaman Shukla and that the rape was committed in the night of 30.03.2012, in the house of PW-6/Jawala Devi and on 31.03.2012 she stayed in the house of accused/Chaman Shukla and no rape was committed with her on that date as accused/Sanjay Kumar was not there.

8. The High Court found that the best evidence about the presence of accused/Sanjay Kumar at Rampur was that of PW-6/Jawala Devi, as rape was committed at her residence. However, PW-6/Jawala Devi has not supported the prosecution nor any other witness who accompanied accused/Lekh Ram have been examined. However, in her statement exhibit PW-13/A and also in supplementary statement dated 08.04.2012, the Prosecutrix had never disclosed that rape was committed upon her at Rampur. There is no evidence as to the relation between accused/Sanjay Kumar and PW-6/Jawala Devi. In respect of the medical evidence, the High Court opined that the possibility of rape could not be ruled out, but the question remained as to who committed the rape and moreover, the DNA profile of the semen found over the underwear of the Prosecutrix has not been done. It is also found, as per evidence, that accused/Sanjay Kumar alone committed rape as there is no charge to that effect against co-accused/Chaman Shukla. However, accused/Chaman Shukla was never informed by the Prosecutrix about the commission of rape.

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9. Since the FIR was lodged regarding the abduction of the Prosecutrix, there is no allegation of rape in the FIR. In her statement under Section 164 Cr.P.C the Prosecutrix stated that rape was committed in the night of 31.03.2012 when she was in the house of accused/Chaman Shukla. However, in her Court's statement she stated that rape was committed by accused/Sanjay Kumar in the night of 30.03.2012 when they were staying in the house of PW-6/Jawala Devi. She admits of not disclosing the fact of commission of rape to anyone in the village Rampur or to the villagers or accused/Chaman Shukla who brought her to the Police Station, Rampur.
10. In view of the above statement on record, we are of the view that there is material contradiction in the statement of the Prosecutrix as to the date of commission of rape and since accused/Sanjay Kumar was not with the Prosecutrix in the night of 31.03.2012 when she was in the house of co-accused/Chaman Shukla and there is no allegation of rape against accused/Chaman Shukla in whose house she stayed on the next night, the High Court has rightly concluded that the commission of rape by accused/Sanjay Kumar is not proved.
11. In the above view of the matter and, particularly, for the reasons that the view taken by the High Court is one plausible view considering the evidence on record, interference against the judgment of acquittal rendered by the High Court is not called for. Accordingly, both the appeals challenging acquittal of accused/Sanjay Kumar and accused/Chaman Shukla are dismissed.

Result of the case: Appeals dismissed.

†Headnotes prepared by: Divya Pandey