



2025:UHC:9688-DB

Judgment reserved on: 30.08.2025
Judgment delivered on: 20.11.2025

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
THE HON'BLE CHIEF JUSTICE MR. G. NARENDAR
AND
THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY
Criminal Appeal No. 298 of 2022

Sanjay Kashyap -----Appellant

Versus

State of Uttarakhand ----Respondents

Presence:-

Ms. Manisha Bhandari, learned counsel for the appellant.
Mr. J.S.Virk, learned Deputy Advocate General assisted by Mr. Rakesh Joshi Brief Holder for the State.

JUDGMENT: (per Sri Subhash Upadhyay, J.)

The appellant, Sanjay Kashyap has filed the present Criminal Appeal against the Judgment and Order dated 18/20.7.2022, passed by Special Judge (POCSO)/ District and Sessions Judge, Tehri Garhwal in Special Sessions Trial No. 33 of 2020, State vs. Krishna alias Basu & another, whereby he has been convicted under Sections 504, 506 and 509 of IPC.

2. The prosecution case, in brief, is that on 05.06.2020, a complaint was filed by the complainant Smt. Pinki (PW1) before the Inspector-in-charge, Police Station Muni Ki Reti, District Tehri Garhwal to the effect that her daughter (victim) is aged 15 years and 9 months



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old; that on 7th/8th May, 2020, when the complainant was busy in her brother's wedding preparation and her other children were at home alone then taking benefit of absence of the complainant, the appellant Krishna alias Basu S/o Ramesh Singh, R/o Shishamjhadi, Kailash Gate, Gali No. 33, Police Station-Muni Ki Reti, District Tehri Garhwal, who was living opposite to her house, under the pretext of giving tuition to her daughter showed her pornographic film and by luring the victim raped her. When the victim told him that she will report about this incident then the appellant Krishna @ Basu threatened to kill her entire family and again committed rape upon her and asked her to keep mum. Today, when the daughter of the complainant felt severe stomach pain then she told her the entire incident. The complainant took her daughter to the Doctor and the Doctor diagnosed rape and internal swelling; that when the complainant went to house of the appellant then the appellant, his mother Rajni and father Ramesh misbehaved with her and drove the appellant free from their home. The complainant submitted that the appellant and his family members are threatening them and are making false allegations against her daughter.

3. On the basis of the complaint (Ext. Ka-1) of the complainant; case was registered against the accused Krishna @ Basu on 05.06.2020 at 16:10 P.M., as Case Crime No. 75 of 2020, at Police Station Muni Ki Reti, District Tehri Garhwal. The investigation of the case was handed over to (PW9) Sub Inspector Shahida Parveen, and against the appellant Sanjay Kashyap (who is the Uncle of the accused Krishna and whose name figured during the investigation), a charge-sheet was filed under Sections 504, 506 and 509 IPC and Section 11/12 & 16



/17 of the POCSO Act.

4. Trial Court took the cognizance of the case and provided copies to the accused and charges were framed against the appellant Sanjay Kashyap under Sections 504, 506 and 509 IPC and Section 11/12 & 16 /17 of the POCSO Act. The accused-appellant Sanjay Kashyap denied the version of the prosecution and claimed trial.

5. The following witnesses were examined by the prosecution in oral evidence:-

Prosecution Witnesses	Name of the Witnesses	Relation to Evidence
PW -1	Smt. Pinky Singh	Mother of the victim (complainant)
PW-2	Constable Pallav Chauhan	Chick FIR writer
PW-3	Manoj Kumar	Victim's Father
PW-4	Dr. Niharika Sachdeva	Medical witness
PW-5	Victim	Victim
PW-6	Dr. Bhupendra Singh Tolia	Medical witness
PW-7	Dr. Ankita Uniyal	Medical witness
PW-8	Sub Inspector Vikendra Kumar	Witness of arrest of co-accused Sanjay Kashyap
PW-9	Sub Inspector Shaida Parveen	Preliminary Investigator
PW-10	Sub Inspector Deepika Tiwari	Investigator
PW-11	Smt. Suman Dobriyal (Principal)	Witness to the date of birth of the victim
PW-12	Shashank Gupta	Witness to the date of birth of the victim

6. The following documents were presented by the prosecution as documentary evidence:-

S.No.	Types of Documents	Documents Exhibit	Paper Number
1	Tahrir	Exhibit Ka-1	Ka-3
2	Chick FIR	Exhibit Ka-2	4 Ka/1-3
3	G.D. of filing case	Exhibit Ka-3	6 Ka
4	Medical Examination report of the Victim	Exhibit Ka-4	16Ka/1-14
5	Statement of the victim recorded under Section 164 Cr.P.C.	Exhibit Ka-5	30Ka/3-4
6	Birth certificate of the victim	Exhibit Ka-6	10Ka
7	Police Information Form, Police Station Rishikesh	Exhibit Ka-7	11Ka
8.	Medical Examination Report of	Exhibit Ka-8	84Ka



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	the victim		
9.	Letter written by the Chief Medical Superintendant to the Chief Medical Officer regarding taking blood sample for DNA testing.	Exhibit Ka-9	37Ka
10.	Victim's blood sample authentication form	Exhibit Ka-10	32 Ka
11.	Blood Sample Authentication Form of accused Krishna alias Basu	Exhibit Ka-11	33Ka
12.	Letter written by the Chief Medical Superintendant to the court regarding taking blood sample from DNA	Exhibit Ka-12	34Ka
13.	Arrest/Information Memo of accused Sanjay Kashyap	Exhibit Ka-13	64Ka/1-2
14.	GD No. 76 of Police Station Muni Ki Reti dated 04.07.2020, time 21:46	Exhibit Ka-14	63Ka
15.	Map view	Exhibit Ka-15	14Ka
16.	Arrest Memo of accused Krishna alias Basu	Exhibit Ka-16	22Ka
17.	Information memo of accused Krishna alias Basu	Exhibit Ka-17	21Ka
18.	Application for permission to record the statement of the victim under Section 164 Cr.P.C.	Exhibit Ka-18	29Ka
19.	Application for permission to record statement of the victim under Section 164 Cr.P.C.	Exhibit Ka-19	30Ka/2
20.	Affidavit of Investigating Officer Shahida Parveen regarding not disclosing the statement of the victim under Section 164 Cr.P.C. to the accused or any other person	Exhibit Ka-20	30Ka/5
21.	Application for taking blood sample of victim and accused Krishna alias Basu for DNA test	Exhibit Ka-21	27Ka
22.	Forwarding letter for chemical test	Exhibit Ka-22	31Ka/1-2
23.	Permission application for sending goods for forensic science laboratory testing	Exhibit Ka-23	36Ka
24.	Forwarding letter for chemical test	Exhibit Ka-24	62Ka/1-2
25.	Charge-sheet	Exhibit Ka-25	5Ka/1-8
26.	Victim's exit certificate issued by the school	Exhibit Ka-26	132 Ka/2
27.	Victim's Secondary School Examination, 2021 Mark-sheet cum certificate.	Exhibit Ka-27	135Ka/2
28.	Transfer certificate issued by the school	Exhibit Ka-28	135Ka/3
29.	Forensic Science Laboratory Report No. FSL-904 (Bio/DNA)/2020, dated 27.07.2020 (order passed on Application Form 137A, Paper No. 138A, dated 21.05.2022, marked as Exhibit under Section 293 Cr.P.C.	Exhibit Ka-29	135Ka/4

7. After the prosecution evidence, the statement



of the accused was recorded under section 313 Cr.P.C., in which, all the prosecution evidence was placed before the accused in the form of question and answer and the appellant denied the allegations made against him and stated that prior to recording of statement of the victim under Section 164 Cr.P.C., a demand of Rs. 12 Lakhs and a further demand for the house, in which, the bother of appellant was residing was made by the family of the victim. He has been wrongly implicated as the family of victim thought that he was the one who had asked his brother (father of the accused Krishna) not to accede to the demand of family of the victim.

8. In defence evidence, the accused presented Dr. Vandana Rajput DW-1 and Dr. Rajendra Garg (DW-2) as defence witness and following documents were presented as the documentary evidence.

S.No.	Types of Documents	Documents Exhibit	Paper Number
1	Register of Shivalik Diagnostic & Imaging Centre, PNDT, 50/3, Dehradun Road, Rishikesh.	Exhibit Ka-1	147A/1-2
2	Victim's U.S.G. of Adbomen & Pelvis Report.	Exhibit D-2	13A/1-2

9. As per the prosecution witness PW1 (mother of the victim) rape was committed by the accused Krishna alias Basu on her minor daughter on the pretext of imparting tuition and the said fact was told to the PW1 by her daughter on 04.06.2020 and she went with a written complaint to Kailashgate Police Station on 04.06.2020, when the Police Station in-charge called the appellant's family to the Police Station then appellant's family members made the appellant run away. On the same evening the appellant was arrested; that as it was very late on 04.06.2020, her report was not registered.



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On 05.06.2020, the family members of Krishna called her to their house and pressurised her for compromise and when she refused then they beaten her. Krishna's Uncle Sanjay Kashyap abused the victim and said that we will buy a girl like her for Five to Ten Lakh Rupees. The victim had consumed poison after hearing this and she was admitted in a Government Hospital at Rishikesh.

10. PW1 in her cross-examination stated that Ext. Ka-1 was written by her before going to the hospital. She further states that it is correct to say that in this report it is not mentioned that the victim consumed poison nor it is written that she is admitted in the hospital because she had written this report on 04.06.2020 itself and this fact is correct that on the report the date of 05.06.2020 is mentioned separately.

11. In the cross-examination, PW1 further stated that during the scuffle she was the only one who was hurt and nobody else was hurt. Even her medical examination was not conducted. She further submits that in the FIR, neither it is mentioned that the appellant Sanjay Kashyap had abused the victim nor it is mentioned that the appellant had said that girl like victim can be purchased in 5 to 10 lakhs. Though PW1 in her statement has stated that the victim had consumed poison on hearing the ill words spoken by the appellant however, in her cross-examination she stated that she cannot tell at what time the victim had consumed poison and the said fact was brought to her notice by her husband. Further, she stated that the appellant was residing separately and was not residing in the lane in which the house of PW1 is situated. She further submitted that a proposal was made by the family



of the accused that the victim and accused would be married and there was an objection from the appellant.

12. PW2 (Constable Pallav Chauhan) is the writer of the Chick FIR. He stated that on 05.06.2020, PW1 came with the Complaint and informed that when the PW1 went to the house of the accused Krishna @ Basu, then the mother and father of the accused misbehaved with her. Thus, as per the statement of PW2, there was no information provided by the PW1 with regard to any scuffle that took place with the appellant.

13. PW3 (father of the victim) in his statement stated that the appellant and the family members of the accused had beaten his wife and when the accused Krishna @ Basu stated that he will marry with his daughter then the appellant stated that girls like his daughter are available in 5 to 10 lakhs and on hearing this, his daughter consumed some poisonous substance and her pregnancy was spoiled. On cross-examination, PW3 stated that the appellant is residing at least ten houses away from his house.

14. PW4 (Dr. Niharika Sachdeva) in her statement recorded that the victim told her in the Medico Legal Examination that the accused Krishna @ Basu was ready for marriage but the uncle and aunt of the accused gave threats and then the victim consumed poisonous substance (Phenyl).

15. As per the statement of PW5 (victim), the father of the accused had called them to his house and the appellant abused her and during the scuffle she was hit by the family members on her stomach and the appellant



held her hand and called her characterless and asked that she should die by consuming poison and, as such, she consumed Phenyl and after regaining consciousness she found her in the hospital. In her cross-examination, PW5 admitted that in the medico legal examination history told by her in hospital she stated that during the scuffle she was hit in her stomach and her mother was also injured. She admitted that in the said medico legal examination history the name of the appellant or his wife was not mentioned and only uncle and aunty was mentioned. She further admitted that the appellant was not residing in the house of the accused and was residing at least 11-12 house away and in the house of the accused his brother Sankalp Kashyap, Shreyash Kashyap, Shashank Kashyap, uncle Santosh Kashyap, aunt Sweta Kashyap and his parents were residing.

16. PW 5 further submitted that she has given the statement to the Police authority that the appellant had told the accused Krishna @ Basu that girl like her would be purchased in 5 to 10 lakhs and the aunty Sweta Kashyap and cousin Sankalp started scuffle, in which, she was hit on stomach. The appellant held her hand and called her characterless and asked her to consume poison. However, she admitted that in the statement under Section 161 Cr.P.C. only it was mentioned that the victim was called characterless and she was asked to settle the things and other statements were not mentioned. In her statement under Section 164 Cr.P.C., the victim stated that the appellant called her characterless and had also asked to settle the matter by accepting 5 to 10 lakhs. The co-accused Krishna was told by the appellant not to marry the victim and was



threatened that she would be killed and on hearing this she went to her home and consumed poison.

17. PW8 (SI Vikendra Kumar), who arrested the appellant on 04.07.2020, in his cross-examination, admitted that the house of the appellant was 500 meters away from the house of the co-accused Krishna and was on a different lane. PW10 (SI Dipika Tiwari), in her statement admitted that the appellant after the registration of the case had not absconded and remained in his house and was arrested from his house.

18. Statements of the prosecution witnesses and the evidence led by the prosecution resulted, in the conviction of the appellant under Sections 504, 506 and 509 IPC. Though the appellant was also charged under Sections 11/12 and 16/17 of the POCSO Act, but it was admitted in the impugned judgment that the charge of POCSO Act was wrongly levelled against the appellant. The statement of PW1 to PW5 depicts contradictions with regard to the incident of 05.06.2020 wherein the appellant was accused of causing hurt to the victim and abusing her. As per the statement of PW 1 she was the only one who was injured in the incident and no one else was injured and her medical was not conducted. As per PW2 the PW 1 on 05.06.2020 informed him that the father and mother of the accused misbehaved with her. There is no information with regard to any alleged incident that occurred on 05.06.2020 involving the appellant. PW3 (father of the victim) in his statement recorded that the appellant and the other family members had beaten his wife and the appellant abused the victim. PW 4 in her statement recorded that the victim during the medico legal examination told that the



uncle and aunt gave her threats and, as such, the victim consumed poison. PW 5 in her statement admits that during her Medico Legal Examination the name of the appellant was not taken by her. She also admits that the appellant is residing in a separate house and other uncle and aunt were residing with the accused Krishna and his family. In her statement under Section 164 Cr.P.C., PW5 submits that she was called characterless by the appellant and was asked to settle the matter and was threatened that she would be killed and on hearing this she consumed poison. There is no mention of the fact that the victim was hit by the appellant on stomach. Thus, it is clear that at every stage, the victim improvise on her statement. The prosecution, as such, failed to prove that as to who were the uncle and aunty who threatened, cause hurt and abused the victim, whether it was the appellant and his wife or the uncle & aunty residing with the parents of the accused who were present on the date of incidence.

19. The statements of PW1, PW3, PW4 and PW5 to PW10 about the incidence of consumption of poisonous substance by the victim on 5th June, 2020 reveals the various contradictions, which are as follows:

- (i) As per PW 1, the uncle of the appellant Sanjay Kashyap abused the victim, as such, she consumed poison and she was admitted to Government Hospital at Rishikesh. PW1 in her cross-examination stated that the fact of consumption of poison by the victim and her admission in Government Hospital was not mentioned in the First Information Report registered on 05.06.2020 as the complaint was prepared by her on 04.06.2020.



- (ii) PW3 (father of the victim) in his cross-examination stated that he did not saw the victim consuming poison (Phenyl) with his own eyes as the victim had locked the bathroom door from inside and the door was made of aluminium, its latch was broken by pushing and the victim was taken out, however the broken latch was not shown to the Investigator. As per PW3, the victim was taken to the hospital on scooter and the victim had vomited once between home and the hospital and the vomit had fallen on the victim's cloth; the said cloths were shown to the Police and the victim wore the said clothes in the hospital. As per PW3 the victim was made to vomit several times in hospital and she regained consciousness in 3-4 hours.
- (iii) As per PW4 (Dr. Niharika Sachdeva) on 5th June, 2020, she was posted at SPS Hospital, Rishikesh, the victim was brought to her for medico legal at 7:15 P.M. In cross-examination, the PW 4 stated that there was no trace of vomit on the clothes of the victim at the time of examination.
- (iv) As per the victim (PW5) on 5th June, 2020 the appellant's father called them to their house and the appellant's aunt and brother abused and beaten her and in the fight they punched her in the stomach. She felt sick and started vomiting and when Sanjay Kashyap abused her by saying her characterless and said you should consume poison and die then she consumed poison and when she regained consciousness she saw her in hospital.



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- (v) The statements of PW6 to PW10 reveal that no efforts were made by them to ascertain as to whether the victim had consumed any poisonous substance or not.
- (vi) Moreover, PW9 (the Investigating Officer) in the cross-examination, admits that there was no broken latch of bathroom and mother of the victim had told him that the victim had consumed poison in bathroom, however, the latch or bolt of the bathroom was not found broken. There is no medical report to indicate that the victim had consumed poison and there is no evidence of the victim being hospitalised for 3-4 days. Thus, the theory of consumption of poisonous substance by the victim in absence of any medical report was belied.

20. In view of the above discussions, we are of the considered view that the prosecution was not able to prove its case beyond reasonable doubt. Accordingly, the appeal is allowed. The Judgment and Order dated 18/20.07.2022, passed by the Special Judge (POCSO)/District & Sessions Judge, Tehri Gahrwal, in Special Sessions Trial No. 33 of 2020, State vs. Krishna @ Basu and another, convicting the appellant under Sections 504, 506 and 509 of IPC, is hereby set aside. Let a copy of this judgment and order along with TCR be remitted back to the concerned Court.

(G. NARENDAR, C.J.)

(SUBHASH UPADHYAY, J.)



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