

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 4088 of 2013****Reserved on: 10.09.2026****Date of Decision: 17.09.2026.**

State of H.P.

...Appellant

Versus

Shambhu

...Respondent

*Coram**Hon'ble Mr Justice Rakesh Kainthla, Judge.**Whether approved for reporting?¹ No.*For the Appellant/State : Mr Tarun Pathak, learned
Deputy Advocate General.For the respondents : M/s Gaurav Kumar and
Avantika Bhandari, Advocates.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 1.11.2012 passed by learned Additional Sessions Judge, Solan, District Solan (learned Trial Court), vide which the respondent (accused before learned Trial Court) was acquitted of the charged offences. *(The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience).*

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

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for the commission of offences punishable under Sections 342 and 376(2)(f) of the Indian Penal Code (IPC). It was asserted that the informant is the father of the victim (name being withheld to protect her identity). The informant and his wife used to leave the home in the morning and return in the evening. The victim and her sister used to remain in the house. The informant's wife returned early on 29.7.2011. The victim revealed that she, her sister, and brother had gone to fetch water. The accused paid ₹10/- to the victim's brother and sister to purchase Kurkure. The accused took the informant to a room and raped her. The informant's wife narrated the incident to the informant. The informant and his wife went to the house of the accused, but he ran away after seeing them. The matter was reported to the police.

3. The police registered the FIR (Ex.PW-6/A). ASI Jeet Singh (PW-13) investigated the matter. He visited the spot and prepared the site plan (Ex.PW-13/A). He seized a blanket containing bloodstains from the spot. It was put in a cloth parcel, and the parcel was sealed with seal 'A'. The parcel was seized

vide memo (Ex.PW-10/A). The victim's mother produced one ghaghra (Ex. P-4), underwear (Ex. P-5), and one piece of bedsheet (Ex. P-6) stained with blood. These were put in a cloth parcel, and the parcel was sealed with seal 'T'. The parcel was seized vide memo (Ex.PW-10/B). Seal impressions (Ex.PW-10/D and Ex.PW-10/E) were taken on separate pieces of cloth. The accused was arrested, and an application (Ex.PW-2/A) was filed for his medical examination. Dr. Vinod Kumar Kapil (PW-2) examined the accused and found that he was capable of sexual intercourse. He issued the MLC (Ex.PW-2/B). The accused took the police to the spot. A memo of identification (Ex.PW-10/C) and site plan (Ex.PW-13/B) were prepared. The spot was videographed, and the video recording was transferred to the CD (Ex.PW-7/A). Dr Manju Behl (PW-3) obtained the blood sample of the victim and issued the MLC (Ex.PW-3/B). Dr Sandhya Gargya (PW-1) examined the victim and found that blood was oozing out from the victim's private parts. According to her opinion, the victim was subjected to sexual intercourse. She issued the MLC (Ex.PW-1/B).

4. The case property was sent to the FSL, and the report (Ex.PX) was issued stating that blood was found on the pyjama,

shirt, underwear, piece of cloth, blanket, ghaghra, vaginal swab, and vaginal slide of the victim. The statements of witnesses were recorded as per their version, and after completion of the investigation, the challan was prepared and presented before the learned Judicial Magistrate First Class, Kasauli, who committed it to the Court of Sessions. Learned Sessions Judge assigned the matter to learned Additional Sessions Judge, Solan (learned Trial Court).

5. Learned Trial Court charged the accused with the commission of offences punishable under Sections 342 and 376(2) of the IPC, to which he pleaded not guilty and claimed to be tried.

6. The prosecution examined 14 witnesses to prove its case. Dr Sandhya Gargya (PW-1) examined the victim. Dr Vinod Kumar Kapil (PW-2) examined the accused. Dr Manju Behl (PW-3) obtained the blood sample of the victim. Constable Dinesh Kumar (PW-4) accompanied the victim to the Medical Officer. Constable Shashi Pal (PW-5) carried the samples to the laboratory. Ashok Kumar (PW-6) was working as MHC, with whom the case property was deposited. ASI Vishnu Dutt (PW-7)

transferred the video recording to the CD. Inspector Kanwar Singh (PW-8) prepared the challan. SI Lakhbir Singh (PW-9) obtained the transit remand of the accused. Atma Ram (PW-10) and Keshav Ram (PW-11) witnessed the recoveries. Sanjeev Pal (PW-12) was present when the informant visited the house of the accused. ASI Jeet Singh (PW-13) investigated the matter. LC Kaushalya Devi (PW-14) accompanied the victim to the hospital.

7. The accused, in his statement recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.), admitted that he was arrested and was medically examined. He denied the rest of the prosecution case. He stated that a false case was made against him and the witnesses deposed falsely against him. He did not produce any evidence in his defence.

8. Learned Trial Court held that the victim was not examined by the prosecution, and there was no evidence that the accused had raped the victim. The medical evidence proved the sexual assault, but it was not proved that the accused had sexually assaulted the victim. The prosecution had failed to prove its case beyond reasonable doubt; hence, the learned Trial Court acquitted the accused.

9. Being aggrieved by the judgment passed by the learned Trial Court, the State has filed the present appeal, asserting that the learned Trial Court erred in appreciating the material on record. The statements of official witnesses were discarded without any reason. The learned Trial Court had not used coercive methods to secure the presence of the informant, the victim, and her parents. Sanjeev Pal (PW-12) stated that the accused had admitted his guilt. This was an extra-judicial confession and should have been relied upon by the learned Trial Court. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. I have heard Mr Tarun Pathak, learned Deputy Advocate General for the appellant-State, and Mr Gaurav Kumar and Ms Avantika Bhandari, learned counsel for the respondent-accused.

11. Mr Tarun Pathak, learned Deputy Advocate General for the appellant-State, submitted that the learned Trial Court erred in acquitting the accused. Sanjeev Pal specifically stated that the accused had confessed to the guilt in his presence, which

amounted to an extra-judicial confession. The learned Trial Court erred in discarding the testimony of Sanjeev Pal. The presence of the victim and her parents was not secured by using coercive methods. The learned Trial Court erred in closing the prosecution evidence. Therefore, he prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

12. Mr Gaurav Kumar, learned counsel for the respondent, submitted that the summons issued to the victim and her parents were returned with the report that the address was incorrect. It was for the prosecution to effect service upon the witnesses or to furnish the correct address, but it failed to do so. There was no evidence that the accused had raped the victim. Sanjeev Pal was not cited as a witness in the FIR, and his testimony cannot be relied upon. Therefore, he prayed that the present appeal be dismissed.

13. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

14. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in

Sanjay Kumar v. State of Bihar, 2026 SCC OnLine SC 1373, that the Court can interfere with a judgment of acquittal only if it is impossible, perverse, wholly unsustainable, or manifestly illegal. It was observed:

Scope of interference with an acquittal:

26. At the outset, it is necessary to remind ourselves of the settled principles governing interference with an order of acquittal. An accused is presumed innocent until proven guilty. When a court of competent jurisdiction acquits the accused, the presumption of innocence is not weakened but reinforced. Where such acquittal is affirmed by the High Court, the caution to be exercised by this Court under Article 136 is even greater.

27. In *Kali Ram v. State of Himachal Pradesh* (1973) 2 SCC 808: 1973 SCC (Cri) 1048, this Court explained the golden thread running through criminal jurisprudence in the following words:

“25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. A rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the Court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the Court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable; it is not the

doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations. As mentioned by us recently in the case of *State of Punjab v. Jagir Singh*, a criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the offence with which he is charged. Crime is an event in real life and is the product of the interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is *ex facie* trustworthy on grounds which are fanciful or in the nature of conjectures.”

28. The decision in *Kali Ram* (supra) further cautions that wrongful acquittal and wrongful conviction do not stand on the same footing, for conviction of an innocent person causes grave injustice and shakes public confidence in the administration of criminal justice. The rule of benefit of doubt, therefore, is not technical; it is a substantive safeguard flowing from the presumption of innocence.

29. In *Ghurey Lal v. State of Uttar Pradesh* (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60, this Court reiterated the limited scope of interference with acquittals. This Court observed:

“75. The Trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the Trial Court. An acquittal by the Trial Court should not be interfered

with unless it is totally perverse or wholly unsustainable.”

30. The decision in *Ghurey Lal* (supra) also crystallised certain propositions: first, there is a double presumption of innocence in favour of an acquitted accused; secondly, if two views are possible, the view favourable to the accused must prevail; thirdly, though the appellate court has the power to reappreciate evidence, it should interfere only when the acquittal is manifestly illegal, perverse or results in miscarriage of justice; and fourthly, due weight must be given to the Trial Court's findings, particularly because the trial judge had the advantage of observing the demeanour of witnesses.

31. In *Chandrappa v. State of Karnataka* (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325, this Court held that though the appellate court has full power to review and reappreciate the evidence, the presumption of innocence is strengthened by an order of acquittal. It was held that when two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal.

32. The same principle was restated in *Mrinal Das v. State of Tripura* (2011) 9 SCC 479, wherein this Court held that an order of acquittal is to be interfered with only when there are compelling and substantial reasons for doing so. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal.

33. Therefore, the question before us is not whether another view on the evidence is possible. The question is whether the view taken by the Trial Court and affirmed by the High Court is impossible, perverse, wholly unsustainable, or manifestly illegal. Having examined the record, we are unable to hold so.

15. The present appeal has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

16. The record of the learned Trial Court shows that the notices were issued to the victim and her parents. These were returned with the report that the addressee had left the address furnished by the prosecution and their whereabouts were not known. The notices were sent to the permanent address, and the notices were returned with the report of the Gram Panchayat that they had left the address without furnishing the address of their intended visit; thus, they could not be summoned.

17. Learned Trial Court wrote a letter to the Director General of Police, Himachal Pradesh, for effecting service upon the witnesses. However, no action was taken, and SHO, Police Station Parwanoo, submitted a report that the victim and her parents had left their permanent address; therefore, they could not be summoned.

18. The present case discloses that the police had not effected service upon the informant and her family members. Learned Trial Court had done whatever was possible and had even written a letter to the Director General of Police; however, still the summons were not served, and the correct address was not furnished. Therefore, the submission that learned Trial Court

should have taken the coercive process by issuingailable warrants or non-ailable warrants is not acceptable. The warrants could not have been issued when the correct address was not filed.

19. Sanjeev Pal (PW-12) stated that he was present in his room on 29th July 2011 at about 7:00 PM. He heard the noise, and he went to the spot. The informant stated that the accused had raped the victim. The accused admitted his guilt and requested forgiveness. The aunt of the accused was also present at the spot, and she asked the accused to leave the place. He stated in his cross-examination that his duty hours were from 8:00 AM to 8:00 PM; however, he had left the factory on 29.7.2011 at 6:00 PM. The accused admitted his guilt in the presence of 5 to 7 persons.

20. The name of this witness was not mentioned in the complaint or in the FIR (Ex.PW-6/A). Rather, it was mentioned that the informant was not permitted to go inside the room where the accused was present. The informant sent the accused to the roof, and the accused could not be found. The names of Hanif, Sanjeev, and Deepankar were mentioned. Thus, the

statement of Sanjeev Pal (PW-12) is contrary to the initial version projected in the FIR. Further, he has not provided any reason why he had left the work on 29.7.2011 at 6:00 PM when his normal duty hours were from 8:00 AM to 8:00 PM. All these circumstances make it difficult to place reliance on the testimony of Sanjeev Pal, and his testimony could not have been used to convict the accused.

21. The prosecution had only examined the Medical Officers, who stated that the accused was capable of sexual intercourse and the victim was sexually assaulted. However, there was no evidence that the accused had sexually assaulted the victim, and the learned Trial Court had rightly held that in the absence of the statement of the victim and her parents, it cannot be said that the accused had raped the victim after taking her into the room.

22. Thus, the learned Trial Court had taken a reasonable view while acquitting the accused, and this Court will not interfere with a reasonable view of the learned Trial Court even if another view is possible.

23. No other point was urged.

24. In view of the above, the present appeal fails, and it is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

25. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

26. Records be sent back to the learned Trial Court forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

17th September, 2026
(Chander)