

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1005 OF 2013

DALIP KUMAR @ DALLI

APPELLANT(S)

VERSUS

STATE OF UTTARANCHAL

RESPONDENT(S)

O R D E R

1. Heard Mr. Avneesh Garg, learned counsel appearing for the appellant. The State of Uttarakhand is represented by Mr. Advitiya Awasthi, learned counsel.

2. The challenge here is to the judgment and order dated 25.03.2013 in the Criminal Appeal No. 203 of 2003 whereunder the learned Judge of the High Court of Uttarakhand has upheld the conviction of the appellant under Sections 363 and 366-A of the IPC.

3. According to the prosecution, the appellant had kidnapped the daughter of one Jawahari Lal (PW-1), who had filed the FIR No. 2 of 1998. In the said FIR, the appellant was not named but he was charged along with other accused under Sections 363, 366-A, 366, 376 read with Sections 149 and 368 of the IPC.

4. The learned Sessions Judge, Pauri Garhwal in the Sessions Trial No. 40 of 1998 evaluated the evidence of the prosecutrix (PW-2), her father Jawahari Lal (PW-1), Rajendra Singh (PW-4) - treated as an eye-witness, and the evidence of the Doctor (PW-3). The trial court acquitted the accused of the more serious charges but convicted the appellant and another accused, under Sections 363 and 366-A of the IPC.

5. On appeal by the accused, the High Court under the impugned judgment upheld the trial court verdict of conviction against the appellant, leading to the present appeal.

6. The prosecutrix was recovered and the recovery memo (Ex.K-2) indicates that she was recovered from the house of the appellant Dalip Kumar @ Dalli and then, on the spot, she was given over in custody to her father. The evidence of the prosecutrix (PW-2) herself is the most significant. In her testimony, she stated that talks of her marriage with the appellant was going on but her father was opposed to the marriage as both belong to different castes. In her cross-examination, the PW-2 clearly indicated that she voluntarily went with the appellant and she never shouted or demonstrated that she was being abducted by the appellant. In fact, her younger sister Sarita saw the prosecutrix going with the appellant near her school but unnaturally, Sarita was never presented as a witness in the case. That apart, although the alleged incident had happened on 18.03.1998 at around 3:00 p.m. and Sarita reached home soon after seeing the prosecutrix proceeding with the appellant, information about the so-called alleged abduction was never given to the police and the FIR came to be lodged at 7:00 p.m. on 19.03.1998 (next day evening).

7. The evidence of the Doctor (PW-3) is vital and relevant. She examined the prosecutrix soon after the alleged incident and observed that there was no sign of injury on her person. She was overall normal and no injury or swelling was found in her person. Sexual assault on the prosecutrix was completely ruled out by the

PW-3. She was also referred to a Radiologist and her report is marked as Ex.K-3. The Doctor opined that the age of the prosecutrix will be in the range of 16-18 years.

8. We must caution that bodily injuries are not necessary to prove sexual assault¹ and neither it is important to raise a hue or cry. In this regard, the Supreme Court's Handbook on Gender stereotypes(2023) provides as under:

"Different people react differently to traumatic events. For example, the death of a parent may cause one person to cry publicly whereas another person in a similar situation may not exhibit any emotion in public. Similarly, a woman's reaction to being sexually assaulted or raped by a man may vary based on her individual characteristics. There is no "correct" or "appropriate" way in which a survivor or victim behaves."

9. It is a common myth that sexual assault must leave injuries. Victims respond to trauma in varied ways, influenced by factors such as fear, shock, social stigma or feelings of helplessness. It is neither realistic nor just to expect a uniform reaction. The stigma associated with sexual assault often creates significant barriers for women, making it difficult for them to disclose the incident to others. In the present case however, the prosecutrix herself had clearly indicated that she was not forcibly taken away by the appellant. The above evidence indicates that the ingredients for sustaining a charge under Section 366-A of the IPC of abductions with the intent to illicit intercourse of the prosecutrix, was totally absent in the present case. Therefore, the conviction of the appellant under Section 366-A IPC cannot be

¹ State of UP v Chotey Lal (2011) 2 SCC 550; BC Deva v State of Karnataka (2007) 12 SCC 122

sustained.

10. Insofar as the conviction for kidnapping under Section 363 IPC, another witness to prove the charge of kidnapping would be the testimony of the prosecutrix's sister - Sarita. She was however withheld by the prosecution. The age of the prosecutrix as per the opinion of the Doctor as earlier noted ranged between 16-18 years and in the absence of any contrary evidence, the possibility of the prosecutrix, being of 18 years age, cannot entirely be ruled out.

11. The evidence of the prosecutrix does not at all support the case of the prosecution. The independent eye-witness Rajendra Singh (PW-4) also did not support the prosecution case on recovery and was therefore subjected to cross-examination by the prosecution. The cross-examination of PW-4 is appreciated and the evidence lets down the theory of recovery as evidenced through Ex.K-2.

12. We are therefore of the view that to sustain the conviction of the appellant on the basis of evidence adduced, would not at all be justified. The prosecution failed to prove the ingredients of both Sections 363 and 366-A of the IPC. The impugned judgment is accordingly set aside and quashed. The appellant stands discharged of the bail bond furnished by him. The appeal is accordingly allowed.

.....J.
(HRISHIKESH ROY)

.....J.
(S.V.N. BHATTI)

NEW DELHI;

JANUARY 16, 2025.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSCriminal Appeal No(s). 1005/2013

DALIP KUMAR @ DALLI

Appellant(s)

VERSUS

STATE OF UTTARAKHAND

Respondent(s)

Date : 16-01-2025 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Appellant(s) :

Mr. Avneesh Garg, Adv.
Mr. Anshul Singh, Adv.
Ms. Iptisha, Adv.
Mr. Harsh Pal, Adv.
Mr. Rameshwar Prasad Goyal, AOR

For Respondent(s) :

Mr. Advitiya Awasthi, Adv.
Mr. Akshat Kumar, AORUPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

The operative part of the order reads as under:

"12. We are therefore of the view that to sustain the conviction of the appellant on the basis of evidence adduced, would not at all be justified. The prosecution failed to prove the ingredients of both Sections 363 and 366-A of the IPC. The impugned judgment is accordingly set aside and quashed. The appellant stands discharged of the bail bond furnished by him. The appeal is accordingly allowed."

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)

(KAMLESH RAWAT)

ASTT. REGISTRAR-cum-PS

ASSISTANT REGISTRAR

(Signed order is placed on the file)