



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 481 of 2015.

Reserved on: 28.02.2026.

Date of decision: 16.03.2026

State of Himachal Pradesh

...Appellant.

Versus

Ajay Kumar

...Respondent.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting? ¹

For the Appellant.

Mr. I.N. Mehta, Senior Additional Advocate General.

For the Respondent:

Mr. Pushpinder Verma, Advocate, vice Mr. K.B. Khajuria, Advocate.

Vivek Singh Thakur, Judge

This appeal has been preferred by the State against judgment dated 19.03.2015, passed by Sessions Judge, Chamba, District Chamba, H.P. in Sessions Trial No. 19 of 2014, titled as State of Himachal Pradesh vs. Ajay Kumar, in case FIR No. 212 of 2012, dated 12.09.2012, registered under Sections 363, 366 and 376 of the Indian Penal Code (in short 'IPC') and under Section 4 of Protection of Children

¹ *Whether the reporters of the local papers may be allowed to see the judgment?*



from Sexual Offences Act, 2012 (in short 'POCSO Act'), whereby respondent/accused has been acquitted.

2. In present case, prosecution agency was set in motion by PW-2, father of victim, by lodging report on 12.09.2012 in Police Station, Sadar, District Chamba, H.P., by submitting that his daughter, PW-1 (Victim), aged 16 years, was missing from home since 09.09.2012 from 6:45/7:00 P.M., with apprehension that she had been enticed by respondent/accused with allurements to solemnize marriage, whereupon FIR was registered under Sections 363 and 366 of IPC.

3. According to prosecution's case, respondent/accused and victim were not traceable despite making all out efforts and ultimately, challan under Section 299 of Cr.P.C was submitted in the Court. Thereafter, respondent/accused was apprehended along with victim on 22.01.2014 and they were medically examined and thereafter, Section 376 of IPC and Section 4 of POCSO Act, were added. Challan was committed by the Chief Judicial Magistrate to the Sessions/Special Court, vide order dated 05.04.2014.

4. Charge against respondent/accused was framed under Sections 363, 366 and 376 of IPC and under Section 3(A), punishable under Section 4 of the POCSO Act.



5. Respondent/accused was subjected to trial and prosecution examined 8 witnesses. Thereafter, statement of respondent/accused was recorded under Section 313 of Cr.P.C. No evidence was led on behalf of respondent/accused.

6. PW-1 (Victim), PW-2 (father of victim) and PW-3 (mother of victim), have been examined by the State to prove the allegation of kidnapping and rape.

7. In her examination-in-chief, PW-1 (victim) stated that she did not remember the date of alleged occurrence with further qualification that nobody had enticed her, nor anything wrong had happened with her. She was declared hostile and was subjected to lengthy cross-examination by the public prosecutor. In cross-examination, she had categorically stated that she was not below 18 years. She had admitted the statement recorded under Section 164 of Cr.P.C. (Ex. PW1/A), before Chief Judicial Magistrate. In further cross-examination, she had admitted that respondent is her husband and she was living with him and a child was born out of the wedlock, who had died in April, 2014.

8. PW-2, father of victim, in his examination-in-chief had stated that he was agriculturist, having three children, i.e., two sons and one daughter. He stated that victim had come to Chamba to see the fair and thereafter, she was missing and he lodged FIR with police, regarding



missing. However, after some days, victim returned back and told that she was with her *Massi* (mother's sister). He had categorically stated that his daughter was not enticed by anyone. In cross-examination, this witness had admitted lodging of FIR, however, he denied the contents thereof, with statement that no such statement was given by him. He had denied the allegations levelled against the respondent/accused and did not admit his statements, recorded under Sections 154 and 161 of Cr.P.C. He had admitted solemnization of marriage of his daughter with the respondent/accused.

9. PW-3, mother of victim, had stated that her victim daughter was 19 years of age with further statement that respondent/accused had not taken away her daughter, nor he used to visit their house. This witness was also declared hostile, but nothing fruitful could be extracted in her examination, in favour of prosecution's story.

10. PW-1, victim, had not levelled any allegation upon respondent/accused, rather she had made statement that she had left the house with her own volition and she had solemnized marriage with the respondent/accused and her parents were too poor to maintain her and, therefore, she did not intend to go to parental home, but intend to live with the respondent/accused, with further clarification that no one had allured



or enticed her to accompany the respondent/accused. She had also stated that she was not interested in pursuing the matter.

11. Prosecution, for proving the age of victim, has relied upon copy of Pariwar register (Ex. PW4/A), but this document is not a conclusive proof of date of birth.

12. Prosecution has also procured a certificate (Ex. PW5/B) of victim, in the shape of School Leaving Certificate, by submitting an application to the Headmaster of concerned Government Primary School, which depicts that date of birth of victim is 26.10.1996 and at the time of lodging of FIR, she was minor. The date of birth of victim stands duly proved.

13. The prosecution's case is based on the report lodged by PW-2, regarding missing/kidnapping of victim (PW-1) by respondent/accused. In examination-in-chief, victim, her father and her mother, while appearing as PW-1, PW-2 and PW-3, have negated the entire incident and they did not allege anything against the respondent/accused. PW-1 has gone even beyond that by stating that nobody had enticed her, nor anything wrong had happened with her. She had also denied that at the time of lodging the report, she was below 18 years. Recording of statement under Section 164 of Cr.P.C. was admitted by her, but in that also, there is no incriminating substance against the



respondent/accused, for the reason that despite the fact that victim had stated that the couple was having a child, there is no evidence on record in this regard, except the statement of the victim. Even if, it is considered that admission/assertion by the victim (PW-1), with regard to giving birth to the child before attaining the age of 18 years, there is nothing on record that the child was born on account of violation of her person by the respondent. Therefore, admitted fact that victim had delivered a child before attaining the age of discretion, is of no help to the prosecution to connect the respondent/accused with the alleged commission of offence, particularly in the light of statements of PW-1, PW-2 and PW-3.

14. Though, age of victim at the time of lodging the report, comes out to be about 16 years, however, proof of age establishing minority of the victim is of no help to the prosecution, because PW-1 has denied the entire story of the prosecution and she has categorically stated that nothing wrong had happened with her. PW-2 has given explanation for changing the stance by stating that at the time of lodging the FIR, he was under impression that his daughter was missing, but after some days, she came back and told them that she was with her *Massi* and his daughter was not enticed by anyone.



15. Statement of PW-3, mother of the victim is also in the same lines and nothing material could be extracted in favour of prosecution, despite lengthy cross-examination of these witnesses.

16. PW-1, victim has categorically stated that she and respondent are living as husband and wife happily and she was not enticed/violated by respondent, as alleged.

17. In the light of aforesaid facts, if present case is not a case of no evidence, the evidence on record constraints this Court to form the opinion that there is no sufficient, cogent, reliable and convincing evidence on record, so as to construe/establish beyond reasonable doubt that respondent/accused has committed an offence under Sections 363, 366 and 376 of IPC, read with Section 3(A), punishable under Section 4 of the POCSO Act.

18. It is settled law that in an appeal against conviction, Appellate Court cannot replace its opinion with the opinion of the Trial Court, in case opinion formed and findings returned by the Trial Court, are plausible and possible to be derived by a prudent man in such circumstances, in light of material on record.

19. In view of above discussion, we are of the considered opinion that there is no merit in appeal and accordingly, appeal is dismissed.



Cr. Appeal No. 481 of 2015

20. Appeal disposed of in aforesaid terms along with pending applications, if any.

***(Vivek Singh Thakur),
Judge.***

***(Ranjan Sharma),
Judge.***

16th March, 2026
(Susheel)