Sanjay vs Union Of India on 6 February, 2025

Author: Sanjay Karol

Bench: Sanjay Karol, Vikram Nath

2025 INSC 317

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 239 OF 2025

SANJAY … APPELLANT(S)

Versus

STATE OF UTTAR PRADESH … RESPONDENT(S)

ORDER

SANJAY KAROL, J.

1. The present appeal arises from the final judgment and order dated 26th July, 2005 passed by the High Court of Judicature at Allahabad in Criminal Appeal No.4911 of 2004 & Reference No.15, which confirmed the judgment and order dated 21st September, 2004 passed by the Additional Sessions Judge, Fast Track Court No.16, Bulandshahar, in Sessions Case SONIA BHASIN Date: 2025.03.04 18:17:44 IST Reason: No.306/2004 whereby the accused-appellant, Sanjay, was convicted under Section 302 and 376(2)(G) of the Indian Penal Code (hereinafter 'IPC') and sentenced to death. The incident in question relates to the alleged rape and murder of a four-year-old girl child.

Prosecution Case

2. The prosecution case emerging from the record, as also set out by the Courts below, is as under :

> 2.1 On 22nd April, 2004, Sanjay (hereinafter referred to as the accused) accompanied the complainant's daughter, aged 4 years (hereinafter referred to as 'X') and her paternal aunt, Rajkumari, to the marriage of one Naresh.

It was part of seven combined marriages taking place at the same hall. After some time, the accused informed Rajkumari that he was taking 'X' home. However, 'X' did not reach home. On query the accused informed that he had left her at the marriage hall itself. 2.2 Later, on 28th August, 2004, on questioning, the accused confessed to having left the body of 'X' in the sugarcane field after committing rape and murder. Upon discovery of the dead body, the complainant lodged an FIR being Criminal Case No.36/2004, P.S. Jahangirabad on 28.02.2004 at 5:45 PM under Sections 376, 302 and 201 IPC.

2.3 S.I. Jai Ram Yadav commenced investigation of the incident, before whom also the accused confessed his guilt and got recovered specific articles from the spot where he had disposed of the body of the deceased. 2.4 With the completion of investigation, the challan was presented in the Court for trial, where the prosecution examined eight witnesses and marked Exhibits Ka 1 to Ka 17. The defence did not adduce any oral evidence.

The reasoning of the Courts below

3. The Trial Court, after elaborate consideration, vide judgment and order dated 20th September, 2004, convicted the accused under Section 376, 302 and 201 of the IPC. The Court gave the following findings:

> a. On consideration of the testimonies of PW1 and PW5, the identity of the body recovered, being 'X', was not in doubt.
>
> b. Given the testimonies of PW1 and PW2, the confessional statement of the accused stood proved, leading to the conclusion that it was he who had killed the deceased by strangulation.
>
> c. Recoveries of articles related to the crime, made at the behest of the accused, are admissible under S.27 of the Indian Evidence Act as proven through PW1, PW2 and PW8.
>
> d. PW3, PW6 and PW7 prove that 'X' was last seen with the accused.
>
> e. The chain of circumstantial evidence is complete against the accused.
>
> f. Given the nature of crime committed on the deceased child, the death sentence is appropriate to be awarded.

4. The accused-appellant preferred an appeal before the High Court of Judicature at Allahabad, which was numbered as Criminal Appeal No.4911 of 2004. A reference for confirmation of the death

sentence was also submitted to the High Court, which came to be numbered as Reference No.15 in consonance with Section 366 of the Code of Criminal Procedure, 1973. Vide the impugned judgment and order dated 26th July, 2005, the High Court confirmed the conviction and death sentence awarded to the accused, giving the following findings:

> a. The evidence on record shows that the dead body was recovered on the pointing out of the accused and identified by PW1, the father of the deceased. b. After considering the testimonies of PW1, PW2, PW3, PW6, and PW7, the circumstances of the last sight of the deceased with the accused stood established.
>
> c. The confession made by the accused stood proved by cogent evidence. The recovery of the dead body, frock, and underwear on the pointing out of the accused corroborated the extra-judicial confession, which was a very strong circumstance against him. d. The circumstances taken cumulatively pointed unerringly towards the guilt of the accused and formed a chain so complete that there is no escape from such a conclusion.
>
> e. The Sessions Judge had rightly sentenced the accused to death.
>
> Issue for consideration

5. The question that arises for consideration before this Court is whether or not the conviction and sentence imposed by the Trial Court, as affirmed by the High Court, are sustainable in law.

Our View

6. We now proceed to examine the prosecution case, as has unfurled through the testimonies of the prosecution witnesses.

PW	Name	Role	Relation
1	Dinesh	Complainant	Father of X
2	Lakhpat	Witness to extra-judicial confession, last seen and recovery	Grandparent of X
3	Rajkumar	Witness to extra-judicial confession, last seen and recovery	Aunt of X
4	C.P. Rajpal Singh	Registration of FIR	-
5	Dr. Yashwant Singh	Post-mortem	-

6	Santo	Last seen witness	Not related
7	Babli	Last seen witness	Not related
8	S.I. Ram Yadav	Investigating Officer	-

7. PW1, Dinesh is the father of the deceased. He deposed that he knew the accused as he was the son of his maternal uncle and had resided in his house for the last 8 months. On 22nd February, 2004, he went to the wedding of one Naresh along with his family. His sister-in-law Rajkumari (PW3) informed him that the accused had taken 'X' home from the wedding hall. However, when they returned home, 'X' was not found. The accused told him that he had left 'X' at the wedding hall. Thereafter, despite continuous search, his daughter was not found.

8. Further that, when 8 days after the incident, he, along with Rameshwar, Lakhpat Singh (PW2) and Ramachandra, enquired about the whereabouts of 'X' from the accused, he confessed of having committed an act of rape and murder of 'X'. The accused then took them to the sugarcane field, where he pointed out the body of the deceased child and other articles worn by her. Consequently, they proceeded to the police station, where Gyanendra Singh lodged a report. He identifies his signature on the FIR (Ex. Ka-1) and the recovery memo. Lastly, he identified the accused in the Court. In his cross-examination, he deposed that he had left his daughter with his sister-in-law Rajkumari while leaving the wedding venue. He further stated that the accused was part of the search efforts and confessed his crime at the marriage hall.

9. PW2, Lakhpat deposed that he had accompanied the accused to the marriage hall. His testimony is similar to that of PW1. 'X' was his grand daughter. He deposed that the accused took 'X' with him from the marriage hall. The accused had also joined the party searching for the deceased, which continued for 5-6 days. Thereafter, at the marriage hall, the accused confessed that he had committed rape and murder of 'X' by strangulation. He further deposed to having witnessed recovery of the body of the deceased at the behest of accused.

10. PW3, Rajkumari is the aunt of 'X'. She deposed that at the marriage hall, around 2:00 PM, the accused left with the deceased child. The accused seemed dull from the date of the incident and was not eating properly. Pertinently, she deposed that the accused confessed to the crime in the field near tube well. This is in contradiction to the statements of PWs 1 and 2, who deposed that the confession took place in the marriage hall. Moreover, in the cross-examination, PW3 then states that she has not witnessed the confession.

11. PW4, C.P. Rajpal Singh, is the police officer who had made GD Entry of the crime based on the written complaint of PW1. He verified his signature on Ex. K-3.

12. PW5, Dr. Yashwant Singh, is the medical officer who conducted a post-mortem on the deceased. He deposed that animals ate away some parts of the dead body. The reason for death, time of death, and sex could not be determined due to the condition of the dead body. He verified his signature on

Ex. K-4.

13. PW6, Santo, and PW7, Babli, deposed that they saw the accused leaving the marriage hall with the deceased child.

14. PW8, S.I. Jai Ram Yadav, is the investigating officer of the case. He deposed that on 28th February, 2004, he took the statement of accused-appellant confessing the crime. Furthermore, the accused disclosed that the dead body was lying in the field of sugarcane. Thereafter, he along with PW1, constables, and some other people, came to the sugarcane field where the dead body was recovered. PW1 identified the dead body, after which the recovery memo was drawn (Ex.Ka-5), which bears his signature. Other articles recovered from near the body of the deceased, i.e., the shirt's button and hair of the deceased, were recorded vide memo Ex.-Ka-6. The accused took him to the house of PW1, where he recovered the clothes (Ex. Ka-8) worn on the day of the incident. He further deposed that the underwear and frock of the deceased, along with the clothes of the accused, were sent to the forensic laboratory Agra for testing, the report of which remained awaited on the date of the examination. In his cross-examination, he deposed that the accused had suffered injuries during an inquiry by witnesses.

15. Undoubtedly, the case at hand is one based on circumstantial evidence. It is the settled law that in a case based on circumstantial evidence, the prosecution must convince the Court that circumstances point towards the guilt of the accused alone and none else, as also lack of his innocence. This Court in Pritinder Singh alias Lovely v. State of Punjab1 succinctly summarized the position of law on circumstantial evidence :

> “17. It can thus be seen that this Court has held that the circumstances from which the conclusion of guilt is to be drawn should be fully established. It has been held that the circumstances concerned “must or should” and not “may be” established. It has been held that there is not only a grammatical but a legal distinction between “may be proved” and “must be or should be proved”. It has been held that the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has been held that the circumstances should be of a conclusive nature and tendency and they should exclude every possible hypothesis except the one sought to be proved, and that (2023) 7 SCC 727 there must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

18. It is a settled principle of law that, however strong a suspicion may be, it cannot take the place of proof beyond a reasonable doubt. In the light of these guiding principles, we will have to consider the present case."

(Emphasis supplied)

16. More recently, this came to be reiterated by this Court in Pradeep Kumar v. State of Haryana2 observing that in circumstantial evidence cases, all facts must be consistent with the hypothesis of the accused's guilt, excluding his innocence and also exclusion of third-party involvement. Moreover, in Pradeep Kumar v. State of Chhattisgarh3, this Court clarified that in cases where there is a heavy reliance on circumstantial evidence and on a perusal of evidence, two views are possible, the one which is favourable to the accused must be adopted. [See also:

Kali Ram v. State of H.P.4]

17. The conviction handed to the accused-appellant has been based on (a) last seen circumstance; (b) extra-judicial confession given by him, leading to the recovery of the dead body of 'X' along with articles worn by her at the time of death; (c) the FSL (2024) 3 SCC 324 (2023) 5 SCC 350 (1973) 2 SCC 808 Report of the articles recovered, both of the deceased and the accused.

18. In the considered view of this Court, the conviction of the accused by the Courts below is based on improper appreciation of evidence on record and in correct appreciation of settled principles of law resulting in the travesty of justice. The entire case of the prosecution, from its genesis, is doubtful.

19. In the first instance, the conduct of the accused does not give rise to suspicion. PW1 and PW2 have deposed to the fact that the appellant was part of the search parties for 5-6 days after the incident. He was always present. In our view, it is improbable that a person who killed 'X' would have been there all along, as a search party looking for her. None suspected him. None pointed a finger of suspension against him, despite the hypothesis of the last seen theory.

20. Another aspect which creates doubt in the prosecution story is that for six days from when the child disappears, there is not a single person who lodges a missing report with the police or any other authority. This aspect is more suspicious coupled with the deposition of PW1 to 3, PW6 and PW7. All these witnesses deposed that they had last seen 'X', leaving the marriage hall with the accused. Despite all these witnesses having made this observation, neither raises a suspicion nor registers a complaint about the missing child. The explanation given by PWs 1 and 2 that for six days they were searching for the child in other villages only renders the genuineness of the prosecution story to be unbelievable. There is no reason ascribed to why they thought 'X' would have been taken to another village, and there is no evidence to support the claim that they actually visited other areas around the spot of the incident. Possibility of involvement of others, including PW3, who also appeared to be a suspect, as is evident from the examination, cannot be ruled out.

21. Furthermore, the body of 'X' was recovered in an open sugarcane field six days after the incident. PWs 2 and 3 deposed that a foul smell was coming from the spot as well. However, no single villager came upon this open spot for six days, which creates suspicion in our minds about the prosecution story. The field is not a jungle; it was cultivated; sugarcane crop was grown; it was privately owned; and the village was inhabited, hence, it is unbelievable that no one noticed the foul smell, particularly when the entire area was combed over for nearly 5-6 days.

22. These circumstances make us doubt the genesis of the prosecution story as also the veracity of the prosecution witnesses and their testimonies.

23. There is no doubt that the case of the prosecution depends entirely on the extra judicial confession of the accused on 28th February, 2004, leading to the recovery of body from the sugarcane field, along with other articles worn by the deceased.

24. The principles of the evidentiary value of an extra-judicial confession are summarized by this Court recently in Kalinga v. State of Karnataka5 as under :

> "16. It is no more res integra that an extra-judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra-judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra-judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra- judicial confession." (Emphasis supplied)

25. We must also advert to the exposition of this Court in Nikhil Chandra Mondal v. State of W.B.6, where B.R. Gavai, J., writing for the bench, observed as follows:

> "16. It is a settled principle of law that extra-judicial confession is a weak piece of evidence. It has been held that where suspicious circumstances surround an extra-judicial confession, its credibility becomes doubtful and loses (2024) 4 SCC 735 (2023) 6 SCC 605 importance. It has further been held that it is well-settled that it is a rule of caution where the Court would generally look for an independent, reliable corroboration before placing any reliance upon such extra-judicial confession. It has been held that there is no doubt that conviction can be based on extra-judicial confession, but in the very nature of things, it is a weak piece of evidence." (Emphasis supplied)

26. The extra-judicial confession and the consequent recovery are also surrounded by suspicious circumstances.

27. The first suspicion of this extra-judicial confession arises from different versions of where the confession took place. PW1 has deposed that the accused confessed his crime at the marriage hall. Meanwhile, PW2 has deposed that it was so done at the tube well. PW3 brings out a different version in her deposition by stating that the confession took place in the field near the tube well.

PW3 changes the story in her cross-examination, stating that the confession was not witnessed by her. In the considered view of this Court, these are not minor contradictions that can be brushed off. There are three different versions of one confession, which does not inspire confidence in the testimony of these witnesses.

28. Apart from the above contradiction, another circumstance which does not inspire confidence of the Court in the testimony of PW1, the Complainant and star witness of the prosecution, is that in his deposition, he stated that he had accompanied his family to the marriage hall. It directly contradicts the testimony of PW8, who deposed that during the investigation when he had recorded the statement of PW1, such a fact was not disclosed.

29. The most pertinent suspicion in the prosecution case is that no single independent witness is adjoined or examined in support of the confession or consequent recovery. We must clarify that this is not a case where the Investigating Officer tried to adjoin independent witnesses, but it was refused. PW1, in his statement categorically states that a large public from the village had gathered when the accused led them to the spot where the body of the deceased was recovered. The investigating officer, PW8, himself deposed that 'some other people' were present during the recovery. No explanation is provided for their non-joining, more so when the entire prosecution case rests on this circumstance. The recovery of the body of the deceased is from a field which is accessible and open to the public, which further warrants need for an independent witness.

30. Given the availability of independent witnesses in this case, the investigating officer has deliberated to exclude them. PW1, in his testimony, also mentions that his father, Ramchandra, and one Rameshwar had also witnessed the confession of the accused. The prosecution has also not examined these two persons. This is a glaring omission in the attending facts and circumstances.

31. We are now considering the report of the Assistant Director, Forensic Lab, Agra. This report has miserably failed to link the accused with the crime. The examination conducted only verifies whether the blood found is of human origin, and that semen was present on the underwear allegedly belonging to the deceased. There is no testing undertaken to compare the blood found on the clothes of the deceased with the blood of the accused-appellant. How does signs of semen found on the clothes of the accused link him to the crime of either rape or murder. It is not the proven case of the prosecution that the semen of the accused was found on any part of the body or clothes of the deceased or for that matter, blood of the deceased found on the clothes of the accused. Alleged recovery of a button of a shirt does not link the accused to the crime in any manner. Cumulatively, therefore, the contents of this report do not point towards the guilt of the accused and fail to substantiate the conviction of the accused-appellant under Section 376 IPC.

32. The only circumstance remaining against the accused that can be believed, is the last-seen theory. PW1, PW2, PW3 and PW6 and PW7 have deposed that they saw the accused lastly with the deceased. It is settled law, however, that conviction cannot be solely based on last-seen theory. This Court in Krishnan v. State of T.N.7 had observed :

(2014) 12 SCC 279 “21. The conviction cannot be based only on the circumstance of last seen together with the deceased.

In Arjun Marik v. State of Bihar [1994 Supp (2) SCC 372 : 1994 SCC (Cri) 1551] this Court held as follows: (SCC p. 385, para 31) "31. Thus the evidence that the Appellant had gone to Sitaram in the evening of 19-7-1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded."

24. In Jaswant Gir v. State of Punjab [(2005) 12 SCC 438 : (2006) 1 SCC (Cri) 579] this Court held that in the absence of any other links in the chain of circumstantial evidence, the Appellant cannot be convicted solely based on "last seen together" even if version of the prosecution witness in this regard is believed.” (Emphasis supplied)

33. We must also clarify that even the last-seen theory against the accused-appellant is not free from suspicion. In her cross- examination, PW7, an independent witness, who has been relied upon for this circumstance, admits that she had not told the I.O.- PW8, on the first instance, that she had seen the accused leaving the marriage hall with the deceased. The reason for this omission at the first instance remains unexplained.

34. This Court is of the view that the circumstances presented before us do not establish conclusively the guilt of the accused in committing the murder and rape of ‘X’.

35. We deem it appropriate to reiterate what came to be observed by this Court in Randeep Singh v. State of Haryana8, that a conviction can only be made when guilt is established beyond reasonable doubt, and as such, there cannot be a moral conviction in law. Though the offence in question strikes at the human conscience, there being a murder of a four-year-old girl child, the evidence brought by the prosecution is not clear and unimpeachable, pointing towards the guilt of the accused alone, meeting with the principles enunciated by this Court in Sharad Birdhichand Sarda v. State of Maharashtra9.

36. Therefore, in view of the above, the conviction of the accused-appellant under Sections 302 and 376 of the IPC is set aside. The impugned order dated 26th July, 2005 passed by the High Court of Judicature at Allahabad in Criminal Appeal No. 4911 of 2004 & Reference No.15, which confirmed the judgment and order dated 21st September, 2004 passed by the Additional Sessions Judge, Fast Track Court No.16, Bulandshahar in 2024 SCC OnLine SC 3383 (1984) 4 SCC 116 Sessions Case No.306/2004 is quashed and set aside. The accused-appellant is directed to be released forthwith, if not required in another detention order.

……J. (VIKRAM NATH) ……J. (SANJAY KAROL) ……J. (SANDEEP MEHTA) New Delhi;

February 6, 2025.

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITON (CRIMINAL) NO.224 OF 2019

SANJAY PETITIONER(S)

VERSUS

UNION OF INDIA & ANR. RESPONDENT(S)

O R D E R

1. Dr. S. Muralidhar, learned senior counsel, submits that as the mercy petition of the petitoner has been rejected by the President of India, the present petition has been rendered infructuous.

2. In view of the above submission, we dismiss this petition as having become infructuous.

.....,J.

(VIKRAM NATH) .....,J.

(SANJAY KAROL) .....,J.

(SANDEEP MEHTA) NEW DELHI;

FEBRUARY 06, 2025.