

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA AD-121 of 2015

Date of Decision: December 24, 2015

Pardeep	Versus	Appellant
State of Haryana and another		 Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE GURMIT RAM**

Present : Mr. Neeraj Sheoran, Advocate
for the appellant.

T.P.S.MANN, J.

The appellant, who is brother of the prosecutrix has filed the present appeal in order to challenge the judgment dated 19.8.2015 passed by learned Additional Sessions Judge, Bhiwani, whereby, respondent No.2-Jitender @ Mini (hereinafter referred to as 'the accused') was acquitted of the charges under Sections 376, 376-A and 506 IPC.

According to the prosecution, the prosecutrix was married to one Rakesh in the year 2000. From their wedlock, one daughter was born. The husband of the prosecutrix died on 15.11.2012. The prosecutrix continued to reside in the house of her late husband. During those days, the accused started visiting her house and also helping her in her affairs. About 9/10 months before the prosecutrix submitted application to the police against the accused when her daughter was away to the school, the

accused visited her house and after threatening to kill her, committed rape upon her. Even thereafter, the accused had been subjecting her to rape. As a result, she became pregnant. On 22.2.2015, the accused called her on phone and asked her to visit Dadri in connection with holding talks. On 23.2.2015, she along with her daughter reached Dadri from where the accused and one Dr. Sandeep forcibly took her in a vehicle to Mahendergarh. She was admitted in a hospital and the doctor gave her an injection so as to terminate the pregnancy. However, she gave birth to a child and the delivery was normal. She reported the matter to her cousin Rajesh on his mobile. Her brother-Pardeep, sister-in-law Santosh, cousin-Ram Kishan and brother-in-law's brother Situ came to Mahendergarh and visited the hospital. However, they were informed that no one by the name of the prosecutrix was admitted. The accused and Dr. Sandeep tried to send her away from the hospital forcibly. They also obtained her signatures on blank papers so as to put her son in some orphanage. They threatened to kill her daughter. When they learnt about her family members looking for her, they escaped from the hospital. Accordingly, on 25.2.2015 after discharge from the hospital, she submitted an application before the Station House Officer, Police Station Bhiwani.

Further case of the prosecution is that during the

investigation, Dr. Sandeep was found innocent by the police. Only the accused was arrested and final report under Section 173 Cr.P.C. submitted against him.

Having heard learned counsel for the appellant and on going through the impugned judgment, this Court finds that while stepping into the witness box as PW1, the prosecutrix did not support the prosecution case, rather according to her, her family members had taken her and her child into possession. They got the application typed from one typist and forcibly obtained her signatures on the same. She was not permitted to go through the contents of the application. They also forced her to make a statement before the Magistrate as per their wishes and according to her, her statement before the Magistrate was not voluntary. She also deposed that she had performed Karewa marriage with the accused in April, 2014 and the accused never committed forcible sexual intercourse with her against her will. After being declared hostile, the prosecutrix during her cross-examination by the learned Public Prosecutor categorically stated that statement under Section 164 Cr.P.C., was made by her under the pressure of her family members. In her application submitted to the police, she had never mentioned that after the death of her husband-Rakesh, the accused started visiting her and helping her in her affairs with bad intention. She also did not

state that 9/10 months before 25.2.2015, the accused came in her house and committed rape upon her person by extending threat to kill her daughter. She also did not mention that the accused committed rape upon her repeatedly. She also stated that the accused never took her to hospital for the purpose of miscarriage. When cross-examined by the defence, she stated that after the death of her husband, the accused used to help her financially and had never committed rape upon her person.

Once the prosecutrix, who is a mature woman, herself has failed to support the case of the prosecution, it would not be safe to conclude that the accused had committed the various offences, for which, he had been charged by the trial Court.

The appeal is without any merit and, accordingly, dismissed.

**(T.P.S. MANN)
JUDGE**

December 24, 2015
amit rana

**(GURMIT RAM)
JUDGE**