

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

Crl. Appeal D-1029-DB of 2014
Date of Decision : July 31, 2015

Santosh Devi

.....Appellant

VERSUS

Sita Ram and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

Present : Mr. D.K.Jangra, Advocate
for the appellant.

Mr. R.S.Chahal, Advocate
for respondent No.1.

Mr. Praveen Bhadu, Asstt. A.G. Haryana
for respondent No.2-State.

T.P.S. MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 30.4.2014 passed by the Additional Sessions Judge, Fatehabad whereby respondent-Sita Ram stands acquitted of the charges under Sections 376 and 506 IPC.

In brief, the prosecution case is that on 16.10.2013 at about 12.30/1.00 p.m., the prosecutrix came to Tohana from Bhiwani to meet her grandson Ripanshu, who used to reside with his mother Darshana, the widowed daughter-in-law of the prosecutrix. The prosecutrix had already obtained an order from

the Court at Bhiwani to meet her grandson Ripanshu. Even on that day after reaching Tohana, she informed Sita Ram on telephone to pick her up from the bus stand. Sita Ram, the father of her daughter-in-law Darshana, reached the bus stand and instead of taking her to his house, took her to some isolated field. She was taken in a room constructed in the field at Ratia road where after being threatened by the accused, she was subjected to forcible sexual intercourse by Sita Ram. Her clothes had been removed and the act of sexual intercourse was without her consent. At the time of the occurrence, her bangles had broken.

Having heard learned counsel for the appellant and on going through the impugned judgment of acquittal, this Court finds that vide order dated 11.4.2013 (Ex. DB), the Family Court had allowed the prosecutrix alongwith one person of the family to go to the house of Darshana to meet her grandson Ripanshu on first Sunday of every month and Darshana was ordered not to obstruct in the meeting of the prosecutrix with Ripanshu at her residence. According to the prosecution, the petitioner had come to the village of the accused on 16.10.2013 for the above-stated purpose. Apparently, it was not the first Sunday of the month and, therefore, there was no occasion for the prosecutrix to visit and meet Darshana as well as the accused. Further, though the prosecutrix deposed before the trial Court that the accused had

telephonically called her to visit Tohana on 16.10.2013 but this fact was not stated by her when her statement Ex. P15 was recorded by the Sub Divisional Judicial Magistrate, Tohana. Also, while lodging the FIR, the prosecutrix had stated that the accused instead of taking her to his house brought her in a room constructed in the field at Ratia road where she was threatened to be killed but in the statement under Section 164 Cr.P.C. she stated that the accused had brought her to an abandoned place. During the investigation, it was revealed that the fields where the offence was committed belonged to the accused. The prosecutrix must have been well aware about the fields of the accused and, thus, was not justified in claiming that she was brought to an abandoned place. It has also come in the evidence that the house of the accused was situated on way to his fields where the offence was said to have been committed. Despite the same, the prosecutrix did not make any hue and cry when the accused did not stop near his house and proceeded to the fields. Even there was no mention by the prosecutrix during her examination under Section 164 Cr.P.C. that her bangles had broken. The accused was aged 74 years while the prosecutrix aged about 56 years. She did not disclose about the occurrence to her husband despite having a mobile phone with her.

At the time of medico-legal examination of the

prosecutrix, no external mark of injury was found on her body. The vaginal swabs and her clothes, when examined in the FSL were not found to have seminal stains on them. Merely because semen was found on the underwear of the accused is no ground that the prosecutrix had been subjected to rape by him.

For the aforementioned reasons, this Court is of the considered opinion that no case is made out for any interference in the impugned judgment of acquittal.

The appeal is devoid of any merit and, accordingly, dismissed.

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

July 31, 2015
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**(MAHAVIR S. CHAUHAN)
JUDGE**