

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-1041-DB of 2015

Date of Decision : August 21, 2015

Raj BalaAppellant

Versus

Pardeep and anotherRespondents

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

Present : Mr. Sahil Khunger, Advocate.

T.P.S. MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 27.2.2015 passed by the Additional Sessions Judge, Exclusive Court, Jhajjar whereby the accused/respondent Pardeep stands acquitted of the charges under Sections 376 and 506 IPC.

The case of the prosecution, in nutshell, is that on 25.8.2014 at about 10.30 p.m., the prosecutrix had gone to the outskirts of her village on foot in search of her son Mohit. When she reached village Bandha, one jeep came there from the side of village Dulhera. The accused, who was driving the jeep, stopped the jeep and asked her as to what she was doing there. She told him about her son having not returned home and she did not know about his whereabouts. Upon this, the accused gave her lift and said that he would help her in locating her son. The accused took her first to the Panchayati Killas of their village and, thereafter, to village Kharman

where he stopped the jeep and forcibly made her to alight therefrom. After pushing her on the ground he committed rape upon her. He threatened her not to disclose about the incident to anyone or else he would kill her and her family members. The accused dropped her near the house of a barber. She could not read the registration number of the jeep because of her illiteracy. Accordingly, she submitted application to the police, on the basis of which FIR No.342 dated 26.8.2014 under Sections 376/506 IPC was registered against the accused at Police Station Sadar, Bahadurgarh.

Having heard learned counsel for the appellant and on going through the impugned judgment, this Court finds that though the prosecutrix claimed to have been subject to sexual intercourse by the accused against her will yet during her medico-legal examination, no struggle marks were found on her face, abdomen, neck or breast, besides her private parts. Even on the vaginal swab taken by the doctor, semen was not detected in the Forensic Science Laboratory. Further, the clothes of the prosecutrix were found intact as neither any tear, rent or cut was noticed nor any stain.

The accused was also medico-legally examined on 28.8.2014 by PW6 Dr. Sandeep. No mark of injury or scratches were noticed on his person. The prosecutrix nowhere stated that the accused had tied her hands or legs and for that reason that she was not able to use her leg and hands in resisting the act of the accused. She could have given scratches with her nails on the exposed parts of his body. In view of the same, there is no corroboration by the medical evidence that the prosecutrix had resisted being subjected to rape by

the accused.

The prosecutrix was aged 50 years at the time of her medico-legal examination. On 26.8.2014, her condition was fair. She was conscious and co-operative and well oriented to time, place and person. Even from the testimony of PW4 Dr. Renu Gahlot, only the possibility of sexual assault could not be ruled out. However, no opinion had been given by the said doctor that the prosecutrix had been subjected to rape.

The accused was said to have met the prosecutrix on 25.8.2014 at about 10.30 p.m. At that time, she was said to be looking for her son in the outskirts of the village. Her version seems to be highly improbable. If her son had gone missing and she was to look for him in the outskirts of the village, she ought to have taken her family members or someone from the neighbourhood with her. Her going all alone to search for her son and, that too, in the outskirts of the village and at about 10.30 p.m. goes a long way to doubt her version.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal.

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

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

August 21, 2015
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