

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

CRA-D-1068-DB of 2015 (O&M)

Date of decision:8.10.2015

Gulzar Ahmed

....Appellant

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. P.P.S. Duggal, Advocate for the appellant.

HEMANT GUPTA, J.(Oral)

The present appeal is on behalf of the victim against the order passed by learned Additional Sessions Judge, Mewat on 27.03.2015 acquitting the accused of an offence under Section 302, 201 and 34 of Indian Penal Code (for short 'IPC').

An appeal filed by the State against the said judgment bearing CRM-A No.1436-MA of 2015 titled State of Haryana v. Aarif and another, stands dismissed on 29.09.2015 as no illegality has been found in the main judgment in an appeal filed by the State.

In view of the said order, we find that there is no reason to examine the argument raised by learned counsel for the appellant again. But at the insistence of learned counsel for the appellant, we have examined the matter again. He refers to a judgment of Hon'ble Supreme Court in Ranu Thakur v. Dayashankar and another, 2015(2) R.C.R.

(Criminal) 153, to contend that this Court may direct second DNA test by obtaining fresh samples.

We do not find any merit in the said argument. In the present case, the accused were arrested after 6 years of the occurrence. The DNA profile of the deceased has not matched with the DNA profile of parents of deceased Abrar.

Once the DNA profile has not matched and the learned trial Court has considered the entire evidence to return a finding that the prosecution has failed to prove the charge for an offence under Section 302 or 201 of IPC, we do not find that such course is warranted in an appeal against the acquittal. There is no infirmity in the test conducted or the samples taken. Therefore, we do not find any justification to order second DNA test in the present appeal directed against the acquittal of the accused.

It is the peculiar facts of the case before Hon'ble Supreme Court which led to passing of order of seeking fresh DNA test in case of an offence under Section 376 IPC when the DNA profile of child born after rape was found necessary and proper. But in the facts of the present case, we do not find any such case is made out.

In view of the above, the present appeal is dismissed.

(HEMANT GUPTA)
JUDGE

OCTOBER 8, 2015
'D. Gulati'

(RAJ RAHUL GARG)
JUDGE