

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

Crl. Appeal D-1162-DB of 2014
Date of Decision : March 26, 2015

Raj Bala

.....Appellant

VERSUS

State of Haryana and another

.....Respondents

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

Present : Mr. S.S.Mor, Advocate

T.P.S. MANN, J.

The prosecutrix has filed the present appeal to the extent of challenging the judgment dated 25.4.2014 passed by the Additional Sessions Judge, Bhiwani whereby the accused, namely, Kuldeep Singh (respondent No.2) was acquitted of the charges under Section 376 read with Section 511 IPC.

Respondent-Kuldeep Singh was tried for the offences punishable under Section 376 read with Section 511 and Sections 452 and 509 IPC on the allegations that on 22.2.2013 at about 7.30 p.m., he entered the house of the prosecutrix when she was all alone and after catching hold of her, opened the string of her *salwar* and attempted to commit rape upon her. On hearing her cries, the husband of the prosecutrix reached there and rescued her from the clutches of the accused.

Vide impugned judgment, the trial Court acquitted the accused under Sections 376/511 IPC. He was, however, convicted under Sections 452, 354-A, 354-B and 509 IPC and sentenced to undergo various terms of imprisonment and also to pay fine.

Having heard learned counsel for the appellant and going through the impugned judgment to the extent of acquitting accused-Kuldeep Singh of the charge under Section 376 read with Section 511 IPC and, instead, convicting him under Sections 354-A and 354-B IPC, it may be worthwhile to notice that in her statement Ex. P4 made to the police, the prosecutrix had stated that at the time of occurrence, she was alone in her house. The door of her house was open. The accused entered her house and took her in an embrace. He pressed her breast, opened the string of her *salwar* and tried to commit rape upon her. Similar statement Ex. P8 was made by the prosecutrix before the Judicial Magistrate when she was examined under Section 164 Cr.P.C. When the prosecutrix stepped into the witness box as PW6, she again made a similar statement. The husband of the prosecutrix was examined by the prosecution as PW8 and he testified that when he reached his house, he saw the accused attempting to commit rape upon his wife, who was crying. He rescued his wife from the clutches of the accused.

It is undisputed that the prosecutrix was not medico-legally examined. Even there is no material on the record that the accused had undressed the prosecutrix or he himself was naked.

There is also no material that the accused had laid himself on the prosecutrix. Under these circumstances, it could not be said that the accused had made an attempt to commit rape upon the prosecutrix. On the other hand, the aforementioned facts constitute commission of offences under Sections 354-A and 354-B IPC. Therefore, no case is made out for any interference in the impugned judgment to the extent of acquitting the accused under Section 376 read with Section 511 IPC.

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

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

**(MAHAVIR S. CHAUHAN)
JUDGE**

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Present : Mr. S.S.Mor, Advocate
for the applicant.

Heard. Sufficient cause has been shown for condoning the delay in filing of the appeal. The application is, therefore, accepted and the delay of 27 days in filing of the appeal is condoned.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

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