

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

**Crl. Appeal D-1138-DB of 2015
Date of Decision: September 7, 2015**

Pooja

.....Appellant

Versus

State of Haryana and another

..... Respondents

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

Present : Mr. M.S.Kathuria, Advocate
for the appellant.

T.P.S.MANN, J.

The prosecutrix has filed the present appeal for challenging the judgment dated 5.6.2015 passed by the Additional Sessions Judge, Bhiwani, whereby accused-Sombir, (respondent No. 2 herein) stands acquitted of the charges under Sections 450, 366, 376(1) and 506 IPC.

In nutshell, the prosecution case is that on 6.4.2014, the prosecutrix and her husband were sleeping on the roof of their house. At about 12:00 mid night, someone picked her up and after taking her in his lap, descended from the roof. She was in sound sleep at that time and when she woke up, she found herself in the lap of Sombir. She tried to rescue herself and raised

noise but the accused threatened to kill her, if she did so. He took her to the roof of his house where bed had already been laid. The accused had forcible sexual intercourse with her and in the morning at 5:00 a.m., he left her on the way leading to her house. On reaching home, when her mother-in-law asked her as to where she had gone, she narrated the entire incident to her. In the meanwhile, her husband who had been searching for her during the night, returned home and she also apprised him about the incident.

Having heard learned counsel for the appellant and on going through the impugned judgment, this Court finds that the prosecutrix's case about the accused coming to her house late at night and taking her in his lap to his house seems to be highly improbable. It was her case that while she was sleeping outside on the roof of the room, her husband was sleeping inside the room. The defence had produced photographs Ex.DB to Ex.DP which photographs have been admitted by the prosecutrix. Those photographs which point to the intimacy between the prosecutrix and the accused were stated to have been clicked by the accused. Her explanation that the photographs were taken by use of force has not been believed by the trial Court. Before the trial Court, the defence had played the recording from the mobile phone, which was also admitted by the prosecutrix. The said

recording contained the conversation between the accused and the prosecutrix. The conversation also pointed towards the prosecutrix being intimately close to the accused. Another circumstance which indicates close proximity between the prosecutrix and the accused is the photographs of the prosecutrix and the accused. As per Ex.DY, one call was received by the accused from the prosecutrix on his mobile phone at 1:43 a.m. on 6.4.2014, which lasted for 119 seconds. The call details have been admitted by the prosecutrix. She also deposed before the trial Court that she did not try to offer any resistance or scratched the face of the accused with her finger nails or even tried to give tooth bite. She became aware about her abduction by the accused after six minutes. She also testified that she was taken by the accused to his roof-top where three cots were lying and Dari was lying on one cot and she was placed on that cot. She also stated that there were houses in front of the house of the accused. Similarly, the house of the accused was occupied by his family members. However, she did not raise alarm in the house of the accused. She remained with the accused upto 2:00 a.m. Thereafter, from 3:00 a.m. to 5:00 a.m., they kept lying on that cot. Finally, it was the accused who left her upto vacant plot situated on the backside of her house. From her deposition, it can safely be concluded that the prosecutrix had willingly

accompanied the accused to his house and when she returned to her house in the morning, she came up with an explanation that she had been forcibly taken away by the accused.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal. The appeal is without any merit and, resultantly, dismissed.

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

September 7, 2015
amit rana

**(GURMIT RAM)
JUDGE**