

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

**Criminal Appeal D-36-DB of 2015
Date of Decision: October 15, 2015**

Sushila DeviAppellant
Versus

State of Haryana and others Respondent

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

Present : Mr. J.P.Sharma, Advocate
for the appellant.

T.P.S.MANN, J

The appellant, who is mother of the prosecutrix has filed the present appeal for challenging the judgment dated 18.10.2014 passed by the learned Additional Sessions Judge, Narnaul, whereby, respondents No. 2 to 6 stand acquitted of the charges under Sections 120-B, 341, 363, 366-A, 376, 506 IPC and Section 25 of the Arms Act.

The case of the prosecution, in nutshell, is that during the intervening night of 29/30.8.2010, the appellant woke up at around 3.00 a.m. for urinating. She saw 4/5 boys standing in her house. She identified them as Kapil, Kala and Hetram. She caught hold of Kapil from his hair but Kala pushed her aside and made her fall on the ground. Those boys had entered her house with some bad intention. Some more boys were present outside her house but she could not identify them. While escaping from

the spot, all the boys proclaimed that they would kidnap her daughter. The appellant woke up her son and apprised him about the occurrence. Her son called his uncle-Dharambir and narrated the incident to him. At around 11/12.00 noon, the appellant along with her daughter went to fetch fuel wood from their plot. As soon as they reached near the plot, a Maruti van reached there. Kapil, Kala and four other boys, two of whom were sons of Netram Jogi and other two sons of Shubhkaran Jogi, alighted from the van. Other boys sitting in the van were tenants of Netram Jogi and Shubhkaran Jogi. Kapil showed her a pistol while one boy showed her a knife. The assailants threatened to shoot her in case she raised an alarm. The assailants kidnapped her daughter and took her in their vehicle. While leaving the spot, the assailants threatened to kill her daughter in case the matter was reported to the police. While going back to her house, the appellant met Deshraj, Shamsheer and Bijender to whom she narrated about the occurrence. According to the appellant, the accused had molested her daughter earlier also but due to fear of insult she did not inform her family members. Even Netram Jogi and his wife Lalita had been stating that she had defamed them in the society by alleging that they had sold their votes in the election of Municipal Council and, therefore, they would defame her by kidnapping her daughter. The appellant further stated that

she had been searching for her daughter on her own but her whereabouts could not be ascertained. Accordingly, she made complaint to the police, on the basis of which, FIR No. 282 dated 31.8.2010 under Sections 341, 363, 366-A, 506, 120-B read with Section 34 IPC and Sections 25/27 of the Arms Act was registered.

Further case of the prosecution is that on 15.6.2011, the prosecutrix along with her father appeared before the police. Her statement under Section 164 Cr.P.C. was recorded by the Magistrate, wherein, she stated that she was aged about eighteen years and on 29.8.2010, at around 11.30 a.m., when she along with her mother went to her plot for fetching fuel wood, Kapil, his brother-Vinod, his cousins Rajender, Ramesh, Sanju and Dalip had caught hold of and pushed her inside the van. She was taken to Hisar and, thereafter, to Gurgaon where she was kept in a rented room for 4/5 days. During that period, Kapil had been subjecting her to rape. From Gurgaon, she was taken to village Baniyar in Gujarat where she was kept in a room for about 3/4 months. During that period also Kapil used to forcibly commit sexual intercourse with her daily. Thereafter, the assailants took her in a train to the house of maternal uncle of Kapil in Virat Nagar. Kapil and his brothers, thereafter, took her to Maharashtra and kept her at different places. She stayed for about 4/5 months

in Maharashtra at Bandra, Kudal and Samantwadi. On 1.6.2011, Kuldeep, a relative of Kapil came there with father of Kapil. When Kuldeep asked if she was facing any difficulty, she told him that she was beaten up and raped. Kuldeep asked her as to whether she wanted to go home and when she replied that she wanted to go home, she was allowed to talk to her mother on the mobile phone of Kuldeep. She told her mother that she was in Samantwadi, District Sindhurghar, Maharashtra in a room situated near the bus stand. She asked her mother to send her father in order to fetch her. On 5.6.2011, the father of the prosecutrix along with others reached there at around 8.30 a.m. She came back with her father in the vehicle. According to the prosecution, the accused had obtained her signatures on some affidavits and also taken snaps of marriage ceremonies. She returned to her house on 11.6.2011. On 12.6.2011, Maharashtra police reached her house and the persons, who were with them in the vehicle were apprehended by the police. Her statement was recorded by the Maharashtra police. Thereafter, she along with her father and brother-in-law came to Chandigarh. On 13.6.2011, she left Chandigarh and stayed at Panipat at the house of her relative. She also stated that Kapil used to give her some contraceptive pills so that she did not conceive. Accordingly, on the basis of her statement, offence under Section 376 IPC was

added in the case.

After hearing learned counsel for the appellant and on perusing the impugned judgment of acquittal as well as the trial Court record, this Court finds that the prosecutrix was admittedly seventeen years and five months old on the date of the commission of the alleged offence. According to the provisions of Section 375 IPC, which were in force on the date of the alleged offence, a man is stated to commit rape if he performs sexual intercourse with a woman with or without her consent, when she is under sixteen years of age. As the prosecution failed to bring on record any material which could indicate that the prosecutrix was less than sixteen years of age, she could give a valid consent for sexual intercourse.

As regards the occurrence in question, this Court finds that the prosecutrix had been a consenting party throughout. She was recovered by her family members from Maharashtra after about nine months. During her statement recorded by the Magistrate under Section 164 Cr.P.C. she had stated that she was forcibly taken away by the accused and raped by Kapil at several places but in her subsequent statement Ex.DA recorded by the Chief Judicial Magistrate, Narnaul, on 12.8.2011, she stated that her previous statement was made under pressure of her father and relatives. She also stated that Kapil and other

accused were innocent and she had accompanied Kapil voluntarily. She also stated that it was Kuldeep, who had told her father about her whereabouts and she apprehended danger to her life from her father and relatives. She, accordingly, asked for being sent to Nari Niketan. Even accused-Kapil, during his examination under Section 313 Cr.P.C. had stated that he and the prosecutrix were friends since the year 2007. The parents of the prosecutrix were intending to marry the prosecutrix against her wishes. Accordingly, the prosecutrix had left her house voluntarily and reached Hisar by bus as he was studying in Polytechnic College there. She called him from the hostel and insisted for taking her to some safe place. At her insistence, he accompanied her to Sawantwari near Goa where they married with free consent and will. The father of the prosecutrix who stood employed in Haryana police had got registered a false case after pressuring and torturing the prosecutrix. Kapil also placed on record the photographs taken at the time of solemnization of his marriage with the prosecutrix. In those photographs, the prosecutrix is shown to be in a cheerful mood. The prosecutrix had also admitted in her cross-examination that at Netra in Gujarat, they travelled in a bus for going to the railway station. A large number of persons met them on the way and at the railway station. She also admitted that they stayed at Bandra for about 1 ½ months in

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a rented house and she used to cook food in the said room. She also admitted her signatures on the marriage certificates.

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

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

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

**October 15, 2015
amit rana**

**(GURMIT RAM)
JUDGE**