

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

**Criminal Appeal D-689-DB of 2015
Date of Decision: November 6, 2015**

RamphalAppellant

Versus

State of Haryana and others Respondent

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

Present : Mr. Jatinder Kumar Kamboj, Advocate
for the appellant.

T.P.S.MANN, J

The appellant, who is father of the prosecutrix has filed the present appeal for challenging the judgment dated 14.2.2013 passed by the learned Additional Sessions Judge-cum-Special Court for Heinous Crime Against Women, Hisar, whereby, accused/respondents No. 2 to 4 stand acquitted of the charges under Sections 363, 366, 376, 309 IPC and Section 3 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Briefly stated, the prosecution case is that the prosecutrix, aged fourteen years and studying in class ten, went missing from her house at about 9.00 p.m. on 19.1.2011. She had

informed her father that she was going to her maternal aunt to sleep there but on the morning of 20.1.2011, it was found that the prosecutrix had not reached house of her maternal aunt nor she returned to her own house. The appellant came to know that his daughter had been enticed by accused-Monu, who was also not present at his house. The appellant left for the police station for lodging the report but learnt on the way that the prosecutrix and accused-Monu were lying admitted in Malik Hospital, Hansi, as they had consumed poison. The appellant suspected involvement of Monu in enticing his daughter and taking her with him. Accordingly, FIR No. 29 dated 20.1.2011 under Sections 363, 366 IPC and Section 3 of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 was registered. After the medical examination of the prosecutrix, offence under Section 376 IPC was added to the case. This was followed by spot inspection and recovery of container of poison and, accordingly, Section 309 IPC was also added in the case. Accused-Monu was arrested on 28.1.2011 while accused Suresh @ Ruldu and Kapoora were arrested on 5.2.2011.

Having heard learned counsel for the appellant and on going through the impugned judgment of acquittal passed by the trial Court, this Court finds that the prosecution has not led any evidence, from which, it could be concluded that the prosecutrix

was aged about fourteen years on the date of commission of the crime. In the medical memo Ex.P18 and OPD slip Ex.P21, the age of the prosecutrix was mentioned as eighteen years. According to the prosecution, the prosecutrix had left her house in order to teach science to her nephews, who were students of class five and class eight. The prosecutrix, who was stated to be fourteen years old and studying in class ten was not expected to teach a student of class eight. Even otherwise, no authenticated document or material has been brought on record by the prosecution to conclusively prove the age of the prosecutrix. Under these circumstances, no fault can be found with the finding arrived at by the trial Court that the prosecutrix had to be treated as about eighteen years of age at the time of commission of crime.

The case of the prosecution is that when the prosecutrix came out of the house of her maternal aunt to ease herself in the open, accused-Monu came there and put his hand on her mouth. When the prosecutrix tried to raise an alarm, accused-Monu abused her and forcibly took her to the tower in the village. However, in her statement recorded by the Magistrate, she had stated that on 21.1.2011, accused-Monu had come to her house and at the same time, she went outside to ease herself. It is the admitted case of the prosecution that there was a

toilet in the house of the prosecutrix. In such a situation, it cannot be imagined that the prosecutrix would have to come out in the open to ease herself. Similarly, the father as well as the mother of the prosecutrix deposed that their daughter had been kidnapped while she was on her way to the house of her maternal aunt. In such a situation, it cannot be said that the prosecutrix had taught her cousins at the house of her maternal aunt before coming out to ease herself.

It has come in the prosecution evidence that when the prosecutrix was carried by accused-Monu to the tower on his shoulder, her mouth was towards the back of the said accused whereas her stomach and chest were touching the chest of the accused. In such a situation, the prosecutrix could have easily raised an alarm which she did not do so. She also claimed that while she was being carried by accused-Monu, she scratched her face besides hitting him. She even tried to escape from the clutches of the accused by offering physical resistance when she was at the tower. However, Dr. Ved Pal Singh, who appeared as PW3 stated that at the time of medico-legal examination of accused-Monu, he did not find any external marks of injuries on any part of his body. PW5 Dr. J.P.Malik, who had initially examined accused-Monu as well as the prosecutrix at Malik Hospital, where they were taken as suspected case of poison,

clarified that he did not notice any mark of injury on the person of accused-Monu and the prosecutrix despite thorough examination. Thus, the medical record clearly indicated that the prosecutrix was a consenting party throughout. As regards the commission of offence under Section 3(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, it may be noticed that the appellant did not produce any certificate that he belonged to a scheduled caste or scheduled tribe. Even otherwise, there is no evidence on the record to suggest that accused-Monu, being a member of upper caste had deliberately committed sexual intercourse with the prosecutrix with an intention to disgrace her who was member of any scheduled caste or scheduled tribe.

As regards the involvement of accused Kapoora and Suresh @ Ruldu is concerned, there is no material brought on the record that they were in any manner involved in kidnapping or enticing the prosecutrix. The only allegation against them was that they had been called by accused-Monu and had made the victim to consume alcohol, whereafter, she was taken in a car to some unknown place. However, when the prosecutrix was medically examined, no traces of alcohol or poison were found in her body.

For the aforementioned reasons, it can safely be

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concluded that accused/respondents No. 2 to 4 have been rightly acquitted of the charge against them.

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

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

November 6, 2015
amit rana

**(GURMIT RAM)
JUDGE**