

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-433-MA of 2015

Date of Decision : August 07, 2015

State of Haryana

.....Applicant

VERSUS

Hariom and others

.....Respondents

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

Present : Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

T.P.S. MANN, J.

The State has filed the present application under Section 378(3) of the Code of Criminal Procedure for grant of leave to appeal against the judgment dated 1.10.2014 passed by the Additional Sessions Judge, Rewari.

Vide impugned judgment, the Additional Sessions Judge, Rewari acquitted the accused respondents of the charges under Sections 363/366A/376D/354A/216 IPC, Sections 4 and 8 of the Protection of Children from Sexual Offences Act and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The case of the prosecution, in nutshell, is that the prosecutrix was aged about seventeen years and nine months and belonged to scheduled caste community. On 27.7.2013, during night, she, alongwith her mother, was sleeping on the

terrace of her house. At about 10.00 p.m., accused Rajbir came and asked her to come down but she refused. One another boy, wearing black shirt, came and also asked her to come down or he would slap her. The prosecutrix, once again, refused to come down. The boy, wearing black shirt, took her in his lap and brought her down. Both, Rajbir and the boy, wearing black shirt, made the prosecutrix sit on a motorcycle and took her to a Kothra at Rojka road. After some time, accused Hariom and Kuldeep @ Path came there on another motorcycle. Both Hariom and Kuldeep @ Path asked Rajbir to leave her with them but Rajbir and the other boy, who was wearing black shirt and identified to be Jaivir, took her towards village Masani. They dropped her at bus-stand of village Khatawali. Rajbir asked her to go back home. Hariom and Jaivir were present at the bus stand. The prosecutrix alleged that while Hariom caught hold of her hand, Jaivir slapped her twice. In the meantime, Mahender, Jagmal and Jawahar Lal came to the spot. The prosecutrix asked Mahender, who was her uncle, that Hariom was not leaving her hand but both Mahender and Jawahar Lal went away. Hariom asked her to open the string of her *salwar*. She refused to do so but was subjected to forcible sexual intercourse by Hariom. Hariom called Rajbir at the bus-stop. When Rajbir reached there, the prosecutrix told him about the incident. Thereafter, she returned home and narrated the incident to her mother.

At the trial of the case, the prosecutrix appeared as PW1 and reiterated the aforementioned version. Her mother, who appeared as PW8 did not support the prosecution case and was declared hostile. PW2 Raju, PW3 Rajender Kumar and PW5 Harpal, whom the prosecution had produced in support of its case, deposed that they did not know anything about the case. All of them were, accordingly, got declared hostile and cross-examined by the learned Public Prosecutrix. During such cross-examination, they denied making statements to the police. As regards the prosecutrix, who had stepped into the witness-box as PW1, suffice it to state that there were contradictions between her complaint Ex.PA, on the basis of which, the FIR was registered and her statement Ex.PB recorded under Section 164 Cr.P.C. with respect to the identity of the accused.

The case, as set up by the prosecution, appears to be highly improbable. In case the two accused, namely, Rajbir and Jaivir had come to the terrace where the prosecutrix was sleeping so as to compel her to accompany them, the mother of the prosecutrix, who was sleeping nearby, would have woken up and, thus, not allowed her daughter to be whisked away by the accused. Further, the prosecutrix, before she was subjected to rape by Hariom, had come across Jawahar Lal and Mahender, who were her uncles and she apprised them about

the entire incident. Both of them did not come to the rescue of the prosecutrix and went away.

It was the case of the prosecution that on the date of occurrence, the prosecutrix was seventeen years and nine months old. During her deposition before the trial Court, the prosecutrix stated that her date of birth was duly registered in the record of Registrar (Births and Deaths), Rewari. However, no such record has been produced by the prosecution. On the other hand, the mother of the prosecutrix testified that her daughter was more than eighteen years of age on the date of incident. Thus, possibility cannot be ruled out about the prosecutrix being more than eighteen years of age on the date of the commission of the crime.

In view of the aforementioned, no case is made out for any interference in the impugned judgment of acquittal.

The appeal is devoid of any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

August 07, 2015
satish