

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. No.A-488-MA of 2015

Date of Decision : August 10, 2015

State of Haryana

.....Applicant

VERSUS

Samunder

.....Respondent

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

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

T.P.S. MANN, J.

The State of Haryana has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 31.7.2014 passed by the Additional Sessions Judge, Rohtak.

Vide impugned judgment, the trial Court acquitted the respondent of the charges under Sections 363, 366 and 376 IPC.

The case of the prosecution, in nutshell, is that complainant-Suresh had submitted an application to the Station House Officer stating therein that the prosecutrix, who was his daughter and aged about fourteen years, had been enticed away by the respondent on 15.1.2011 on the pretext of marriage. The FIR was registered under Sections 363 and 366-A IPC. Later on, after the arrest of the respondent and the recovery of the prosecutrix from his custody, offence under Section 376 IPC was also added.

Having heard learned State counsel and going through the impugned judgment, this Court finds that after the prosecutrix was recovered, she was taken to the Court of the Magistrate for recording her statement under Section 164 Cr.P.C. In her statement so recorded, the prosecutrix stated that she had gone with the

accused on her own. She also did not allege commission of rape. Further, though the prosecutrix was enticed away on 15.1.2011 yet when she was produced before PW10 Dr.Dolly Sharma on 16.1.2011 for her medico-legal examination she had given history of sex with the same person for the last two years. As regards the age of the prosecutrix, PW8 Dr. Surender Singh deposed on the basis of dental examination that she was between fourteen to twenty five years of age. Similarly, PW9 Dr. T.S. Bagri testified that he conducted ossification test on 2.2.2011 and on its basis assessed her age to be between fourteen and sixteen years. As ossification test is not a sure test, there could be a margin of two to three years, on either side, and, thus, it cannot be said with certainty that the prosecutrix was less than eighteen years of age on the date when she was said to have been subjected to forcible sexual intercourse. Even her mother, while appearing as DW1, testified that the prosecutrix was of twenty years of age at the time of alleged incident.

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 application is without any merit and, therefore, dismissed.

Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

August 10, 2015