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

**CRM-A No. 452-MA of 2016(O&M)**

**Date of Decision: July 25 , 2016.**

State of Haryana ..... APPELLANT (s)

**Versus**

Dharmender @ Dholu and others ..... RESPONDENT (s)

**CORAM:- HON'BLE MR.JUSTICE S.S.SARON**
**HON'BLE MRS.JUSTICE LISA GILL**

Present: Mr. Surender Singh Pannu, DAG, Haryana.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

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**LISA GILL, J.**

The State of Haryana seeks leave to appeal against judgment dated 11.08.2015 whereby the accused-respondents, Dharmender @ Dholu son of Rajbir, Dharmender son of Man Singh, Ravi son of Chabeela Dass and Bhagwan Dass @ Soni son of Dalbir Singh have been acquitted of the charges under Sections 365/366/376D IPC framed against them.

As per the prosecution story, the complainant – Diwan Singh son of Daryao Singh approached SI Sat Narayan on 28.07.2014 when SI Sat

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2016.08.31 11:38
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Narayan alongwith Constable Prabhu Dayal was present at the gate of Police Station, Jhajjar. An application was submitted by Diwan Singh disclosing that Dharmender @ Dholu (respondent No.1), Dharmender son of Man Singh (respondent No.2) and two of their companions were engaged in labour work in their village. All the family members of the complainant had gone to attend a function nearby on 27.07.2014. His niece (prosecutrix) remained back and was all alone at home. The abovesaid four persons abducted his niece, who is the daughter of Ram Chander on finding her alone. The prosecutrix raised an alarm but was not heard because everyone was busy in the function. Someone thereafter informed them that his niece had been abducted by four persons and was being taken away in a car. On receiving this information, the complainant and others chased the abductors and were able to apprehend one of the boys at some distance from the village. The apprehended boy revealed his name as Dharmender son of Man Singh (respondent No.2) and he further disclosed the identity of the other three boys. Dharmender son of Man Singh (respondent No.2) further disclosed that they had planned to kidnap the prosecutrix about three days earlier but they failed to get an opportunity. The complainant further submitted that someone had informed them about the modus operandi of the above named persons in respect to kidnapping girls and selling them at Chhattisgarh for earning quick money as they did not earn much by doing labour. Legal action against the culprits was prayed for.

FIR No.508 dated 28.07.2014 (Ex.PW1/A) was registered under Sections 363/366/365 IPC by ASI Om Parkash on receiving 'ruqa'

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2016.08.31 11:38
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(Ex.17/A) from ASI Sat Naryan through Constable Prabhu Dayal. Endorsement, Ex.PW1/B thereon was made by ASI Om Parkash.

Bala wife of Suresh produced the prosecutrix before the Investigating Officer, PW17 SI Sat Narayan on 03.08.2014. The prosecutrix was subjected to medical examination at General Hospital on 03.08.2014 as per MLR (PW4/A). Statement of the prosecutrix under Section 161 Cr.P.C. was recorded on 03.08.2014 and the offences punishable under Sections 376D/506 IPC were added. DD No.34 dated 03.08.2014 (Ex.PW18/A) was recorded. Custody of the prosecutrix was handed over to Mrs. Bala wife of Suresh vide Ex.PW13/A. Four sealed parcels containing clothes, vaginal swab and pubic hair alongwith forwarding letter and sample seal were taken in possession vide memo PW10/A.

Statement (Ex.PW16/B) of the prosecutrix under Section 164 Cr.P.C. was recorded before the Illaqa Magistrate on police request on 04.08.2014. The prosecutrix (PW7) revealed that she was abducted by Dharmender @ Dholu (respondent No.1) on 27.07.2014 when she had gone to convenience herself. Dharmender @ Dholu (respondent No.1) had forced her into a Maruti Van by threatening her with a knife. The prosecutrix (PW7) revealed that she had gone to convenience herself on 27.07.2014 at about 7.15 p.m when accused Dharmender @ Dholu (respondent No.1) came there in a Maruti van and forced her in the said van at a knife point. He drove the Maruti van towards Jhajjar with the music playing at full volume. He took her to Risalwala on the way from Jhajjar to

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2016.08.31 11:38
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Bahadurgarh and committed rape upon her in an abandoned tile factory. Dharmender @ Dholu (respondent No.1) also assaulted her with an iron 'Panna' (wrench) as a result of which she became unconscious and on regaining consciousness, she found herself in a closed room. Bhagwan Dass (respondent No.4) and Ravi (respondent No.3) as well as one Ankit were also present in this room. All of them committed rape upon her by using condoms. Bhagwan Dass and Ravi were forcing her to marry Dharmender @ Dholu. She was threatened with dire consequences on her refusal. Respondent No.4 – Bhagwan Dass, respondent No.3 – Ravi and accused – Ankit left the room to make arrangements for solemnizing the marriage, while respondent No.1 – Dharmender @ Dholu went to arrange for a vehicle. When all of them left the room, she raised a hue and cry which attracted some passerby who opened the door. She managed to come out of the room. She borrowed the passerby's mobile phone and contacted her family members. Consequent thereto, her brother Parveen (PW12) came there after about one and a half hour and brought her back home on 29.07.2014.

The accused Dharmender @ Dholu (respondent No.1) was arrested on 31.07.2014 and medico legally examined at General Hospital, Jhajjar as per MLR (Ex.PW9/B). A sealed parcel of clothes alongwith sample seal and forwarding letter by the attending Medical Officer were taken in possession vide recovery Memo Ex.PW6/A. Dharmender @ Dholu (respondent No.1) suffered a disclosure statement Ex.PW17/B regarding his complicity in the commission of crime. Photocopy of the Mark sheet of the

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2016.08.31 11:38
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Senior Secondary Examination of the prosecutrix was also taken in possession vide memo Ex.PW11/C on 02.08.2014. Accused Dharmender @ Dholu retracted from his disclosure statement and suffered a fresh one (Ex.PW17/C) regarding his involvement in the crime and he offered to point out the place of occurrence where he had confined the prosecutrix. Rough site plan (Ex.PW17/D) was prepared. Dharmender @ Dholu yet again retracted from his disclosure statement on 05.08.2014 and suffered another disclosure statement (Ex.PW17/E) disclosing that the knife he had used during the commission of crime was kept concealed at the residence of one of the co-accused. The said knife was recovered pursuant to his disclosure statement and taken in possession vide Ex.PW6/D. Rough site plan (Ex.PW17/F) of the place of recovery of knife was prepared in respect to the recovery of knife. Respondent No.4 – Bhagwan Dass and respondent No.3 – Ravi were arrested on 06.08.2014 and medico-legally examined at General Hospital, Jhajjar. Disclosure statements of accused Bhagwan Dass and Ravi i.e., Ex.PW14/D and Ex.PW14/C, respectively, were recorded regarding their complicity in the crime. Memo of demarcation (Ex.PW14/E) was prepared at their instance.

Respondent No.2 – Dharmender son of Man Singh was arrested for the offence punishable under Section 365 IPC on 03.09.2014. Two of the other accused, named subsequently i.e., Monika and Ankit were found innocent by DSP, Jhajjar and accordingly reflected in column No. 2 in the police report under Section 173 Cr.P.C. Case property was sent for analysis to FSL Madhuban on 05.09.2014. On completion of investigation, report

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2016.08.31 11:38
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under Section 173 Cr.P.C. was prepared by PW17 SI Sat Narayan and presented before the court 29.10.2014. The matter was committed to the court of Sessions and on finding a prima facie case against the accused, charges were framed for committing offences punishable under Sections 365/366 IPC against all the accused and under Section 376D IPC against Dharmender @ Dholu, Ravi and Bhagwan Dass on 10.12.2014.

The prosecution examined as many as 19 witnesses to prove its case. Report of the FSL (Ex.PX) was tendered in evidence on 22.12.2014. Accused in their statements under Section 313 Cr.P.C. denied all the incriminating evidence and material put to them. They pleaded innocence and false implication. Three witnesses were examined in defence.

The learned trial court on considering the facts and circumstances of the case as well as the entire evidence on record, acquitted all the respondents-accused of the charges against them vide impugned judgment dated 11.08.2015 affording benefit of doubt to them. It has been held by the learned trial court that in the given facts and circumstances of the case, if the evidence of the prosecutrix is read and considered in totality of the circumstances in conjunction with the other evidence on record, her deposition did not inspire confidence. None of the circumstances sought to be proved by the prosecution lead to a definite and irresistible conclusion of guilt of the respondents-accused as charged. Aggrieved therefrom, State of Haryana seeks leave to appeal against the said decision dated 11.08.2015.

Learned counsel for the applicant-State submits that material evidence on record has been ignored by the learned trial court. In fact, the

Omkar Singh
2016.08.31 11:38
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sole testimony of the prosecutrix is sufficient to convict the culprits. The fact that the prosecutrix did not raise any alarm by itself cannot lead to an inference that she willingly accompanied the culprits. She was kidnapped by four adult males, one of them having a knife. Furthermore, Dr. Sanu Verma (PW4) who conducted the medical examination of the prosecutrix has deposed that there was an abrasion on the right hand of the prosecutrix. Semen was not detected on the vaginal swabs and clothes of the prosecutrix because the accused committed rape using condoms. Semen found on the clothes of the accused persons was not explained. Therefore, leave to appeal is liable to be granted and the impugned judgment deserves to be set aside and respondents No.1 to 4 convicted for the offences as charged and punished accordingly.

We have heard learned counsel for the State and have gone through the available record.

The arguments addressed by learned counsel for the State are not well founded, especially in view of the evidence on record. There are stark and material discrepancies in the version given by the prosecutrix (PW7) and her uncle PW11 Diwan Singh (complainant) and PW12 Parveen, the prosecutrix's cousin who is stated to have come to her rescue when called by her (prosecutrix). It is not in all circumstances that in a case under Section 376D IPC the sole testimony of the prosecutrix can form the foundation for conviction of the accused. Rather, it is equally well settled that in case such a testimony does not inspire confidence, the Court would

Omkar Singh
2016.08.31 11:38
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look for corroboration from other material on record.

There is no dispute that the prosecutrix (PW7) was above 18 years of age. Her date of birth is 21.11.1994 as per mark sheet Ex.PW11/C of Senior Secondary Examination, which was handed over to PW17, SI Sat Narayan by Shri Niwas son of Daryao Singh i.e., the uncle of the prosecutrix. The prosecutrix was thus nearly twenty (20) years old at the time of the incident. The prosecutrix (PW7) as noticed above has testified that she had gone to convenience herself near the water tank ('Diggi') on 27.07.2014 at about 7.15 p.m. when respondent No.1 – Dharmender @ Dholu came there in a Maruti van and forced her into the van while threatening her with a knife. They proceeded towards Jhajjar with music on full volume in the van. The prosecutrix (PW7) was taken by respondent No.1 – Dharmender @ Dholu to Risalwala on the way from Jhajjar to Bahadurgarh and he committed rape upon her at an abandoned tile factory. She was also assaulted with an iron 'Panna' (wrench) due to which she lost consciousness. When the prosecutrix regained consciousness, she found herself in a closed room in the presence of Sunny @ Bhagwan Dass (respondent No.4), Ravi (respondent No.3) and Ankit, friends of Dharmender @ Dholu (respondent No.1). The said three persons also committed rape upon her using condoms. The abovesaid three persons were forcing her to marry Dharmender @ Dholu (respondent No.1). On her refusal, she was threatened with dire consequences. Respondent No.4 – Bhagwan Dass, respondent No.3 – Ravi and accused – Ankit (found innocent during investigation) left the room to make arrangements for

Omkar Singh
2016.08.31 11:38
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solemnizing the marriage, while respondent No.1 – Dharmender @ Dholu had gone to arrange for a vehicle. When all of them left the room, she raised a hue and cry which attracted some passerby who opened the door and she managed to come out of the room. She borrowed the passerby's mobile phone and contacted her family members. Consequent thereto, her brother Parveen came there after about one and a half hour and brought her back home on 29.07.2014. The prosecutrix (PW7) has revealed that there is no toilet in their house and every family member goes to the said place which is about 10 acres away from their house. Nearly all the women of the village, numbering about one thousand (1000), proceed to that place for conveniencing themselves but none was present when she had gone there. She has stated that there was no one present in the house at the time of incident and there was no 'abadi' near the area.

It is relevant to note that in contradiction to the complainant's version, the prosecutrix has stated that none of her family members came to her rescue. She has further stated that Dharmender @ Dholu (respondent No.1) was alone when she was forced into the Maruti van. She was made to sit by him in the front passenger seat beside the driver seat. Dharmender @ Dholu drove the van with one hand while holding the knife with the other hand in order to intimidate her. It is, however, admitted that the attention of respondent No.1 – Dharmender @ Dholu was very much on the road. It is disclosed by the prosecutrix (PW7) that accused Dharmender @ Dholu and all his friends were employed for labour work (marble work). They worked at their house i.e., house of their grandfather for about 2-3 months. Accused

Omkar Singh
2016.08.31 11:38
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– Dharmender @ Dholu allegedly made unwanted gestures towards the prosecutrix in respect to which she complained to Dharmender @ Dholu's sister. However, instead of checking him, his sister asked the prosecutrix to marry Dharmender @ Dholu. Despite the said behaviour, accused – Dharmender @ Dholu was allowed to continue with the work of labour in her grandfather's house.

In stark contradiction to the sequence of events narrated as above by the prosecutrix (PW7), PW11, Diwan Singh (complainant) has stated that his niece, the prosecutrix (PW7), remained at home when they had gone to attend a function in the village nearby their home. In their absence, respondent No.1 (Dharmender @ Dholu), respondent No.2 (Dharmender son of Man Singh) alongwith two others kidnapped his niece, information of which was received by them. They chased the accused persons and apprehended respondent No.2 – Dharmender son of Man Singh at the spot. It is a matter of record that Dharmender son of Man Singh (respondent No.2) was arrested on 03.09.2014 and not on 27.07.2014.

PW7 the prosecutrix has to the contrary stated that it was respondent No.1 - Dharmender @ Dholu alone who abducted her at knife point. She further does not mention about being chased by the complainant and others as alleged by the complainant. It is also to be noted that PW11 Diwan Singh (complainant) admits that respondent No.1 – Dharmender @ Dholu was working in the house of his brother Rohtash son of Narayan and was known to the complainant.

These are material discrepancies which cause a serious dent in

Omkar Singh
2016.08.31 11:38
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the prosecution version and the benefit of doubt necessarily accrues to the accused in the given fact situation.

There is a material discrepancy as regards the date on which the prosecutrix (PW7) returned home. PW7 the prosecutrix stated that she managed to contact her brother Parveen and family members upon which, her brother PW12 Parveen came to the spot and took her home on 29.07.2014. However, PW12 Parveen categorically stated that he received a telephonic call from PW7 prosecutrix from an unknown number on 28.07.2014 disclosing that she was in village Satroad near Hisar. The prosecutrix was brought from village Satroad by him on 28.07.2014 itself. She was admittedly not produced before the police till 03.08.2014.

PW11 Diwan Singh (complainant) in his cross-examination denied that the prosecutrix returned home on 29.07.2014. While setting forth a third version, the complainant took a stand that the prosecutrix returned home on 2/3.8.2014. A perusal of the testimony of PW17 SI Sat Narayan, the Investigating Officer also raises suspicion on the prosecution version. PW17 SI Sat Naryana admits that none had reported that the prosecutrix had been missing or was kidnapped by anyone on 27.07.2014. As per application Ex.PW11/A, it was mentioned that one Dharmender son of Man Singh was caught at the spot but the said person was neither produced before him nor is there any explanation as to why no action was taken against him till his arrest on 03.09.2014. A futile attempt has been made to say that the complainant disclosed Dharmender son of Man Singh to be innocent in the matter of kidnapping of the prosecutrix. There was

Omkar Singh
2016.08.31 11:38
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admittedly no such statement of either the complainant or anybody else to this effect.

PW6 Constable Subhash was joined in the investigation by PW17 SI Sat Narayan on 31.07.2014, 01.08.2014 and 05.08.2014. A witness to memo Ex.PW6/A as well as memo Ex.PW6/D vide which a knife stated to be recovered from Dharmender @ Dholu was taken in possession, was declared hostile. Therefore, all attempts of the prosecution to connect respondent No.1 – Dharmender @ Dholu with the offence in question on the basis of recovery of the alleged weapon used for intimidating the prosecutrix are also futile.

Further, the medical evidence on record does not, in any manner, inculpate the respondents-accused. Dr. Sanu Verma, Medical Officer, CHC Dighal, District Jhajjar, on examination of the prosecutrix vide Ex.PW4/B noted as under:-

> INJURIES/GENERAL EXAMINATION:
> (i) Abrasion and healed wound at right hand, size 2 x1cm.
> (ii) No injury mark at thigh, buttock, abdomen and neck.
> (iii) Breast well developed. No injury mark over it.
> (iv) Axillary hair well developed but patient shaved. No injury mark and swelling over it.
>
> LOCAL EXAMINATION:
> (i) Pubic hair well developed but hair shaved. No injury mark over it (sample was not sufficient).
> (ii) Labia majaro and minora- no injury mark over it but blood clot present because of mensural bleeding coming out.
>
> P/V EXAMINATION:
> (i) 1 cm size open (one finger easily inserted).
> (ii) Uterus AV/AF, Cx OS closed.
> (iii) Hymen torn posteriorly. No swelling and tenderness over it.

Omkar Singh
2016.08.31 11:38
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In her cross-examination PW4 Dr. Sanu Verma stated that the injury on the right hand may be about 20 days old and if the prosecutrix was subjected to forcible intercourse by more than one person, injury marks would be noticed on Labia majora. It is relevant to note at this stage that the prosecutrix in her statement (Ex.PW7/A/B) before the Police has not mentioned the use of condoms by the three friends of accused Dharmender @ Dholu. This has been stated in her testimony before the court. Thus the argument raised by the learned counsel for the State in this regard does not carry any weight.

The factual matrix of the case as noted above reveals no explanation whatsoever for the discrepancies in the manner of the alleged abduction, the persons involved at the time of said abduction and the date on which the prosecutrix returned home. The medical evidence too does not corroborate the version given by the prosecutrix. All these factors indeed raise a serious doubt on the prosecution version, the benefit of which has been rightly afforded to the accused by the learned trial court.

No other point has been urged.

Learned counsel for the applicant-State is unable to point out any substantial or compelling reasons which may warrant interference with the impugned judgment. Acquittal of an accused is not to be interfered with lightly and merely because another view may be possible. The Hon'ble Supreme Court in **Mahamad Khan Nathekhan v. State of Gujarat *(2014) 14 SCC 589*** while reiterating the basic principles has specifically held that in case of acquittal there is a double presumption of innocence in

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2016.08.31 11:38
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favour of the accused as it stands reinforced, reaffirmed and strengthened by acquittal, by the trial court.

We, thus, find no perversity, infirmity or illegality in the impugned judgment dated 11.08.2015 passed by the learned Additional Sessions Judge (Exclusive Court), Jhajjar which calls for any interference by this Court. Accordingly, leave to appeal is declined.

( **S.S.SARON**)
**JUDGE**

( **LISA GILL** )
**JUDGE**

July 25 , 2016.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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2016.08.31 11:38
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