

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

**Criminal Misc. A-808-MA of 2018**

Date of Decision : July 26, 2018

Suresh Chand

....Applicant

**VERSUS**

State of Haryana and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN  
HON'BLE MR. JUSTICE FATEH DEEP SINGH**

Present : Mr. Vishal Thakur, Advocate for  
Mr. Keshav Pratap Singh, Advocate  
for the applicant.

**T.P.S. MANN, J.**

The applicant, who is father of the prosecutrix has filed the present application under Section 378(3) Cr.P.C. for leave to appeal against the judgment dated 6.1.2018 passed by learned Additional Sessions Judge, Palwal whereby respondents No.2 and 3, accused in the case, stand acquitted of the charges under Sections 120-B, 366, 376(2) and 506(ii) IPC.

According to the prosecution, on 29.4.2016 the petitioner met ASI Mahender and presented application wherein he requested the police to recover his daughter, i.e. the prosecutrix from the clutches of the accused. According to him, the accused, alongwith others, had abducted his daughter after making her unconscious.

The parents of the accused also did not give any satisfactory reply

when he brought the incident of abduction of his daughter to their notice. Accordingly, the FIR under Sections 365/34 IPC was registered against the accused.

It is also the case of the prosecution that on 7.5.2016, ASI Mahender recovered the prosecutrix and got her statement recorded under Section 164 Cr.P.C. On 12.7.2016, Raj Kumar accused was arrested. On 14.7.2016, when the matter was taken up in the monthly meeting of the district administration, it was ordered to get the statement of the prosecutrix recorded again from the Judicial Magistrate. The Duty Magistrate, however, dismissed the application for re-recording the statement of the prosecutrix. However, the police recorded supplementary statement of the prosecutrix and also got her medico-legally examined. On 20.9.2016, accused Bharat Lal was arrested.

After hearing learned counsel for the applicant and on going through the impugned judgment of acquittal, this Court finds that though the alleged instance had taken place on 19.4.2016 yet the FIR was registered after a delay of more than eleven days. Though the prosecutrix claimed that she had been subjected to rape by the accused but she refused to undergo medico-legal examination. However, PW13 Dr. Preety, who conducted medico-legal examination of the prosecutrix ruled out any injury on the vagina or other body parts of the prosecutrix. However, the final opinion was kept reserved till receipt of reports of seminal and DNA

analysis of the clothes, besides the swabs. As per the reports Ex.PX and PY, human semen was not detected.

According to the prosecution, the place of abduction of the prosecutrix was a thickly populated area. The prosecution version of abduction of the prosecutrix is, thus, highly doubtful. The prosecutrix had remained with the accused for a sufficiently long period of time. She was first taken to Hassanpur Chowk from where she was taken to Haridwar in a private car. She was, thereafter, brought back to Faridabad where she was kept in a rented room. As per the scaled site plan Ex.P1 prepared by ASI Sarwan Kumar, Mark 'A' depicted the room where the prosecutrix was kept for about 18/19 days. This room was surrounded by other rooms and houses. Despite the same, no attempt was made by the Investigating Officer to enquire about the incident from the neighbourhood. ASI Mahender also did not visit the places where the prosecutrix was kept by the accused.

The first statement of the prosecutrix recorded under Section 164 Cr.P.C. was in favour of the accused. In order to wriggle out of the same, an attempt was made by the prosecution to get her statement re-recorded from the Magistrate. The said request was, however, declined by the Duty Magistrate. From the contents of the first statement of the prosecutrix recorded by the Judicial Magistrate it was very much clear that the prosecutrix, who was not shown to be a minor, had herself accompanied the accused and

going from place to place without offering any resistance or trying to escape.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal. The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

**July 26, 2018**  
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**( T.P.S. MANN )**  
**JUDGE**

**( FATEH DEEP SINGH )**  
**JUDGE**

Whether speaking/reasoned : YES / NO

Whether reportable : YES / NO