

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

**CRM A-399-MA of 2017
Date of Decision : July 30, 2018**

Rekha KashyapApplicant

Versus

State of Haryana and another Respondents

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

Present : Mr. Rakesh Gupta, Advocate
for the applicant.

T.P.S.MANN, J.

The prosecutrix has filed the present application under Section 378(4) read with Section 482 Cr.P.C. for grant of special leave to appeal against the judgment dated 4.11.2016 passed by the learned Additional Sessions Judge, Exclusive Court, Nuh, whereby the accused, namely, Aamir-respondent No.2 herein, was acquitted of the charges under Sections 354, 506 IPC and Section 4 of the Protection of Children from Sexual Offences Act. He was, however, convicted under Section 342 IPC and sentenced to undergo imprisonment for six months besides paying fine of Rs.1,000/-

According to the prosecution, the prosecutrix was a student of 10th standard. On 12.5.2014, she sought leave from her teacher and started for her house. When she reached near the gate of Idrish, respondent No.2-Aamir son of Sahid, Sharukh,

Farukh, Aamir son of Yunus and Sajid caught hold of her and dragged her into a room where Sahid and Sharukh were already sitting. The boys standing outside bolted the room and locked it. Aamir and Sharukh gagged her mouth with the help of the cloth and caught her from chest, kissed her forcibly and after removing her shirt, again kissed her. Sharukh who was having a knife in his hand, threatened to kill her, in case, she disclosed about the incident to anyone. After half an hour, she became unconscious. At about 2.00 p.m., when she regained consciousness, she felt herself in a bad condition. She alleged that the aforesaid persons kept her confined for four days. She disclosed the incident of her family members after 5/6 days and, thereafter, the matter was reported to the police.

Having heard learned counsel for the prosecutrix and on going through the record, this Court finds that neither in the complaint Ex.PW1/B on the basis of which the FIR was registered nor in her statement recorded under Section 164 Cr.P.C., the prosecutrix alleged that she was raped by the accused. In her statement, the prosecutrix also did not name any of the accused. Further, while describing the history to Dr. Jyoti Sabharwal, Lady Medical Officer, she did not level allegations of rape or penetrative sexual assault. She only mentioned that she was forcibly taken by six boys of her neighbourhood and sexually assaulted. As such, there was no history of penetrative sexual assault. She had also

stated that she was beaten by her mother and father two days prior to arrival in the hospital. All the injuries noticed on her person were stated to be blunt with probable duration of 48 hours.

The occurrence in question had taken place on 12.5.2014. According to the prosecutrix, she was confined by the accused for four days. She disclosed about the incident to her family members after 5/6 days. The FIR was finally registered on 24.5.2014. There was, thus, a delay of ten days in the lodging of the FIR which delay has not been satisfactorily explained.

In the application moved by the prosecutrix on the basis of which the FIR was registered, it was mentioned that she was 16 years of age and a student of 10th class. When the father of the prosecutrix appeared as PW5, he stated that she was aged about 15 years and studying in 10th class. The mother of the prosecutrix was also examined as PW7 but she did not state as to what was the age of the prosecutrix. The prosecution relied upon the birth certificate Ex.PW1/A, in which, the date of birth of the prosecutrix was mentioned as 14.4.1998. As the incident had taken place on 12.5.2014, she was more than 16 years of age. However, the learned trial Court observed that the prosecutrix was approximately 15 years 10 months old and, thus, a minor on the date of the incident. However, as mentioned above, the prosecutrix was more than 16 years of age, therefore, the trial Court was not correct in holding that she was 15 years and

10 months of age on the date of the incident.

Going by the conduct of the prosecutrix that she remained with the accused for four days and, thereafter, did not disclose about the incident to her family members for another 5/6 days, it will not be appropriate to upset the impugned judgment to the extent of acquitting respondent No.2-Aamir under Sections 354, 506 IPC and Section 4 of the Protection of Children from Sexual Offences Act. The application is devoid of any merit and, therefore dismissed. Special leave to appeal is declined.

(T.P.S. MANN)
JUDGE

July 30, 2018
amit rana

(FATEH DEEP SINGH)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No