

(2001) 10 P&amp;H CK 0183

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Criminal Appeal No. 721 of 2001

Tara Devi and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision:** Oct. 18, 2001**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 120B, 366, 376

**Citation:** (2003) CriLJ 725 : (2002) 1 RCR(Criminal) 148**Hon'ble Judges:** M.L. Singhal, J**Bench:** Single Bench**Advocate:** Amrit Lal Jain, for the Appellant; Sudhir Nehra, AAG, for the Respondent**Final Decision:** Allowed

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**Judgement**

M.L. Singhal, J.

In case FIR No. 198 dated 13-9-1999 registered under Sections 363, 366, 376, 120B of the Indian Penal Code at Police Station, Pataudi, Smt. Tara Devi wife of late Chandgi Ram alias Lal Chand, Ahir and her son Raju alias Ved son of Chandgi Ram alias Lal Chand were challenged under Sections. 363/366/376 and 120B of the Indian Penal Code by the police of PS Pataudi. They were committed to the Court of Session for trial by Judicial Magistrate 1st Class, Gurgaon vide his order dated 10-12-1999.

2. Vide order dated 10-1-2001, Additional Sessions Judge, Gurgaon charged Smt. Tara Devi and her son Raju u/s 366, IPC. He also charged Raju u/s 376(2)(g) of the Indian Penal Code and Tara Devi for having abetted the commission of rape on Mamta. They pleaded not guilty to the charge and claimed trial.

3. The facts which led to their prosecution briefly stated are that Mamta Devi wife of Ramesh Kumar has one daughter and two sons. Her husband was serving in Delhi. She along with her children was putting up with her mother. Smt. Shanti Devi at house No. 156, Ward No. 6, Shiv Colony, at the back of Good Luck School in Haili Mandi. On 20-8-1999, Mamta went to the school to leave her daughter Hem Bala

there. It was noon time. Mamta, however did not return. After waiting for some time for Mamta Shanti Devi went in search of Mamta here and there. She sent for her son-in-law Ramesh Kumar who is husband of Mamta from Delhi. Ramesh Kumar reached the house of his mother-in-law Smt. Shanti Devi. Smt Shanti Devi informed all the relations through her son-in-law Ramesh Kumar. They made frantic efforts to hunt out Mamta but to no effect. A few days before 20-8-1999, Smt. Tara Devi w/o late Chandgi Ram alias Lal Chand (accused) was tenant in her house. When she got that house vacated from her, she warned them that she would destroy her family and abduct Mamta. After Shanti Devi got her house vacated from Tara Devi, Tara Devi shifted to Hardeva Colony near Railway Station. Haili Mandi. Smt. Tara Devi has three sons Madan, Raju and Deepak, Mandan, Raju and Deepak were also putting up with their mother Tara Devi in Hardeva Colony, Haili Mandi. Raju was missing since 20-8-1999. Smt. Shanti Devi reported the matter to the police on 28-8-1999 through application Ex. PD in which she laid her suspicion on Raju that he had abducted Mamta and was keeping her in his custody. It was stated by Shanti Devi in application Ex. PD dated 28-8-1999 that Smt. Shanti Devi came to her house and challenged her that she should do whatever she could do as her son Raju had abducted her daughter Mamta and was keeping Mamta in his custody. She further threatened her that they would not allow her to reside in Shiv Colony Ward No. 6, Haili Mandi, Gurgaon. On application Ex. PD case FIR No. 198 dated 3-9-1999 Ex. PD/1 was registered at Police Station, Pataudi u/s 363/366 of the Indian Penal Code.

4. On 29-10-1999 Mamta was recovered by Sin Devi SI/SHO Police Station, Pataudi when she was standing at Railway Station, Ishapuri on being identified by Smt. Shanti Devi and Ramesh Kumar. At that time, Mamta was all alone, SI/SHO Siri Devi recorded her statement. She took her to CHC, Pataudi for medical examination. Mamta was medico-legally examined by Dr. Narinder Kaur Bains on 29-10-1999 at CHC, Pataudi. She did not find any mark of injury/contusion/laceration on her breast, hips, thighs, legs and any other part of her body. Breast was fully developed. Pubic hair were developed, not matted, not shaved. No foul smelling discharge or any other discharge was present. There were contusion marks circular, one on the right side of inner thigh and second on the inner side of the left thigh. There was lap sterilisation scar on the abdomen. Hymen was absent, there was no discharge from urethra. Anal area was normal. No bleeding per vagina. No discharge was present in vagina, Uterus retroverted, multiparous size, Mobile fornix was clear. No tenderness was present. She was wearing blue underwear which was made into a parcel. It was sealed, Two Swabs from posterior vaginal fornix were taken. Those were made into parcel which was sealed. Swabs and underwear were sent to Director, Forensic Science Laboratory Madhuban, Karnal. After going through the report of the Director, Forensic Science Laboratory Madhuban, Karnal, she stated that Mamta had not been subjected to sexual intercourse within a period of 72 hours before her examination as there was no semen in the vaginal swabs nor on the under-wear as per report of the Director, Forensic Science Laboratory Madhuban, Karnal.

5. Dr. Rakesh Kumar, Medical Officer, CHC, Pataudi PW-1 who medico-legally examined Raju alias Ved son of Chandgi Ram (accused) stated that there was nothing to suggest that he (Raju) was not capable of performing sexual intercourse, Director, Forensic Science Laboratory, Madhuban, Karnal did not detect semen on the under-wear or Banyan of Raju, which were sent to him for detection of semen if any on them. After investigation both the accused were challaned. They were committed to the Court of Session by the Judicial Magistrate 1st Class, Gurgaon.

6. On the conclusion of the trial, learned Additional Sessions Judge, Gurgaon found charge u/s 366/376(2)(g) of the Indian Penal Code proved against both the accused. Both of them were sentenced to undergo R1 for 5 years each and to pay fine of Rs. 2000/- each u/s 366 of the Indian Penal Code and R1 for 10 years each and to pay fine of Rs. 5000/- each u/s 376(2)(g) of the Indian Penal Code vide order dated 21-5-2001.

7. Both of them have come up in appeal to this Court against the order dated 21-5-2001 of the Additional Sessions Judge, Gurgaon convicting and sentencing them as aforesaid.

8. Mamta PW-2 who is the star witness in the prosecution case stated that she was putting up with her mother Shanti Devi in Haili Mandi, She was married to Ramesh Kumar 17 years ago. She has three children, eldest is daughter named Hem Bala. At the time of occurrence she was studying in 8th class. On 20-8-1999 she went to leave her daughter at school. When she was returning from the school, accused Tara Devi took her to her house on some pretext. She had known Tara Devi earlier as Tara Devi was tenant in their house. She was given something by Tara Devi to smell. She became unconscious. She regained consciousness after two months. Tara Devi is the mother of three sons. Earlier they were their tenants. They remained their tenants for about 9/10 months. They asked Tara Devi to vacate their house as her act and conduct was objectionable, Tara Devi then administered threat that she will see them and she will ruin their family. Tara Devi along with her three sons including Raju then started living in some other rented house in Haili Mandi at some other place. For the first time after 3/4 days, she regained consciousness. She found herself in the tenanted house of Tara Devi after she was given something to smell by Tara Devi. She used to take her to different places and during her unconsciousness, she used to be subjected to forcible intercourse by many persons including Raju accused. She was declared hostile and cross-examined by the Public Prosecutor for the State. In her cross-examination by the public prosecutor for the State, she stated that when she was taken by Tara Devi, her son Raju was in the house. He enticed her and took her away. He took her to different places. He took her to a rented house at Gari Harsarai, Raju used to rape her during her unconsciousness. He used to administer her threat not to tell any body about her abduction or rape by him. Similarly his mother Tara Devi used to administer her threat. Both of them gave her threat that in case she disclosed to any body the fact

of her abduction and rape, her children would be killed. On 22-10-1999 she found an opportunity to escape from the clutches of Raju and Tara Devi. She reached Ishapuri Railway Station where her husband along with police met and brought her to her house. She used to be semi-conscious when accused raped her. Throughout this period she remained under the threat of Tara Devi. She was cross-examined by the learned defence counsel. In her statement Ex. DA, there is no mention that Tara Devi had taken her to her house. There is no mention that for the first time, when she regained consciousness in the house of Tara Devi, 3/4 days had elapsed since after she was brought there. There is no mention in her statement that Tara Devi used to take her to different places and during her unconsciousness, she was subjected to forcible intercourse by many persons including Raju. In her statement this fact is mentioned that she was subjected to forcible intercourse by Raju a number of times, when she was taken from one place to another she was taken by train in the night. She was not in such conscious a state as to be able talk to any passenger. Accused did not allow her to talk to any body. They used to remain with her. Shanti Devi PW-6 who is Mamta's mother stated that at about a year back it was month of Sawan when Mamta had gone to the school to leave her daughter Hem Bala there. Mamta however did not return from the school. They waited for her up to the evening. Thereafter, they searched her here and there in the neighbourhood as well as in their relations but could not trace her. Smt, Tara Devi-accused used to reside in her house as tenant earlier along with her sons including Raju-accused. They got the premises vacated from them. At that time they had threatened her mother to destroy her family. They had also threatened to take away her daughter-Mamta. After vacating their premises, they started residing nearby in Hardeva Colony near Railway Station, Haili Mandi. Madan, Raju and Deepak are the sons of Tara Devi. The house where Tara Devi was putting up along with her sons after vacating her house is sufficiently away from her house. In her cross-examination, she stated that she did not retaliate when the accused gave threat at the time of vacation of her house that her family would be destroyed and her daughter would be abducted.

9. It is not a case of abduction of Mamta by Raju and/or his mother. It appears to be a case of elopement of Mamta with Raju and voluntarily submitting of her to Raju. Mamta was 30 years old. She had three children. Her daughter Hem Bala was the eldest. She was 17 years old, Raju was only 21 /22 years old and was unmarried. It is not believable that he kept her two months with him without her consent or against her will and raped her. As per Mamta she was taken to different places. On the way she did not talk to any one that Raju had abducted her from Haili Mandi on 20-8-1999 and was keeping her forcibly and subjecting her to sexual intercourse without her consent and against her will. As per her Raju had taken some house on rent where he kept her for all this period up to 22-10-1999. She did not talk to any one during this period at Gari Harsarai or else where that Raju had abducted her and that he was subjecting her to forcible intercourse. In the statement made by her to the police she has stated that Tara Devi brought her to her house. Had she not

been willing to alone with Raju, she would not have gone to the house of Tara Devi. It appears that no threat was given by Tara Devi at the time when she vacated the house of Shanti Devi or she was made to vacate the house of Shanti Devi, that she would destroy her family. It is not believable that she was kept by Raju accused for two months and all that period she was administered something which landed her into state of unconsciousness if she were being taken from one place to another by train and she were in a state of unconsciousness, how could this fact escape from the notice of other passengers that she was unconscious. Other passengers would have asked them why she was unconscious and from where they had come and to which place they were going. Had she been subjected to intercourse forcibly at any time, she would have offered resistance and suffered contusions or lacerations. Dr. Narinder Kaur Eeins who medico-legally examined her did not find any contusion, laceration or injury on her breast, hips, thighs, legs, abdomen or any other part of her body.

10. It is a clear case of elopement of Mamta with Raju. She had illicit relations with Raju, When she sound an opportunity, she slipped and joined him to be with him.

11. For the reasons given above, I am of the opinion that the prosecution story is riddled with improbabilities and unnatural-ness. So, this appeal is allowed and conviction and sentence passed upon by the appellants by the learned Additional Sessions Judge, Gurgaon vide order dated 21-5-2001 is set aside and they are acquitted of the charge framed against them. Fine, if any, paid shall be refunded to the appellants.