

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

CRA-S-418-SB-2003

Date of Decision : 16.01.2015

Tarsem Lal

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA

Present : Ms. Aditi Girdhar, Advocate (Legal Aid)
for the appellant.

Mr. Amit Chaudhary, Addl. A.G., Punjab.

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

ASHUTOSH MOHUNTA, J.

Appellant Tarsem Lal has filed this appeal being aggrieved by the judgment of conviction and order of sentence dated 27.01.2003 passed by learned Addl. Sessions Judge, Hoshiarpur, whereby he was convicted under Sections 363 & 376 IPC and sentenced to undergo rigorous imprisonment for a period of 7 years under both the counts and to pay a fine of ₹ 1,000/- and in default to further undergo rigorous imprisonment for a period of six months. Both the sentences were ordered to run concurrently.

Briefly, the facts of the case are that Sarabjit Kaur, prosecutrix, daughter of Sh. Avtar Singh, was 15 years of age and was residing in a rented house of Chanu Ram, resident of village Pawal along with her parents. She was studying in Govt. High School at village Meghowal Ganjian and had taken examination of middle standard. On 4.5.2001 at about 8 p.m., the co-accused of the appellant Bhajan Kaur came to the

house of the prosecutrix and took Sarabjit Kaur to her house on the pretext of answering the call of nature. When she took the prosecutrix to her house, accused Tarsem Lal was present there. He is alleged to have enticed away the prosecutrix in conspiracy with Bhajan Kaur and took her to Bhangi Chow Hoshiarpur on his bicycle. The accused remained with the prosecutrix at Bhangi Chow Hoshiarpur on the night of 4.5.2001 and on the next morning, accused Tarsem Lal took her to Mata Chintpurni in a bus, where he hired a room. On 5.5.2001 accused Tarsem Lal committed rape upon prosecutrix Sarabjit Kaur forcibly. He threatened her that in case she raises a hue and cry then he would kill the prosecutrix. Out of fear Sarabjit Kaur remained silent. Next day on 6.5.2001 at about 4 a.m. accused again committed rape upon Sarabjit Kaur forcibly. Thereafter on the same day he brought the prosecutrix to Hoshiarpur and made her to board a tempo and went away. While going, the accused again threatened the prosecutrix that in case she disclosed the matter to anyone then he would kill her and her family members. Sarabjit Kaur returned to her village on 6.5.2001 at about 6 p.m. and remained for the night in the room built in the memory of Puran Chand. On the next day Sarabjit Kaur reached her house in the evening and disclosed the matter to her mother as well as her father. On the basis of the statement made by Sarabjit Kaur before ASI Ravinder Kumar, Incharge, Police Post Nasrala, on 7.5.2001 at about 8.40 p.m., the present FIR was registered against the accused Tarsem Lal as well as Bhajan Kaur. The prosecutrix was medically examined by Dr. Paraminder Kaur Sethi on 8.5.2001. Accused Tarsem Lal was also medically examined by Dr. Jagdish Singh Saini on 10.5.2001 and he was found fit to perform sexual intercourse.

Investigation was carried out and during investigation the school leaving certificate Ex. PG was taken into possession.

The case was committed for trial and before the trial Court the prosecution examined PW-1 Sarabjit Kaur, PW-2 Ajit Kaur, PW-3 Dr. Jagdish Singh Saini, PW-4 C-Sukhram Singh, PW-5 Ram Singh, Draftsman, PW-6 Dr. Parminder Kaur Sethi, PW-7 HC Tarsem Singh, PW-8 Sh. M.P. Dhiman, Head Master, Government High School, Meghowal Ganjian, PW-9 ASI Rajvinder Kumar and PW-10 C Rachhpal Singh.

When examined under Section 313 Cr.P.C., the accused Tarsem Lal stated that Sarabjit Kaur was in love with him and it was she who compelled him for elopement. He further admitted that both of them had sex at Chintpurni. It was further stated that Bhajan Kaur was not a party to the elopement and she has been falsely implicated. It was further stated that the prosecutrix was more than 18 years of age.

The averments made by the accused were, however, denied by the prosecutrix as well as by her mother. It was stated that the prosecutrix was 15 years of age and was studying in middle class. Evidence to this effect was also led by way of statement of Sh. M.P. Dhiman, Head Master, Govt. High School Meghowal Ganjian. School leaving certificate Ex. PG was also tendered in evidence.

The trial Court after going through the entire evidence found that the prosecutrix was 15 years of age at the time when she was enticed away and rape was committed upon her and therefore convicted the accused appellant Tarsem Lal under Sections 363 and 376 IPC and sentenced him to undergo rigorous imprisonment for 7 years under both the counts. It was, however, held by the trial Court that Bhajan Kaur has no role to play in the kidnapping of the prosecutrix and accordingly acquitted

her.

Learned counsel for the appellant Tarsem Lal has raised two fold arguments before this Court. It has firstly been argued that as per the ossification test of Sarabjit Kaur, which was conducted to determine her age, the Medical Officer who conducted the test in his report has opined that the age of the prosecutrix could be between 16½ years to 19 years. Thus, he has argued that as the prosecutrix was not a minor and had voluntarily consented to go away with him, hence no case of rape is established against the appellant.

It was next argued that there no case under Section 363 IPC is made out against the accused-appellant as he never threatened the prosecutrix and that she went with him on her own. It was argued that at the time when Sarabjit Kaur was taken away from her house, permission was taken from her mother Ajit Kaur.

Per contra, counsel for the State has argued that the prosecutrix had given her middle class examination and as per the statement of her mother Ajit Kaur as well as the statement of the prosecutrix Sarabjit Kaur, she was 15 years of age. As per the statement of Sh. M.P. Dhiman, Head Master, Govt. High School, Moghowal Ganjian, prosecutrix Sarabjit Kaur was 15 years of age. He proved her school leaving certificate Ex. PG, which shows that she was below the age of 16 years. It was, thus, contended that it is immaterial that the prosecutrix was a consenting party or not and the fact that she was below 16 years, the accused was liable for committing the offence punishable under Section 376 IPC.

It was also argued by the counsel for the State that the prosecutrix being a girl of 15 years of age was enticed away by accused

Tarsem Lal from lawful legal guardianship of her parents, the accused had not only taken her to Hoshiarpur but thereafter to Mata Chintpurni also and hence the accused is liable to be convicted for the offence under Section 363 IPC also.

I have heard learned counsel for the parties at length.

Perusal of the record of the present case shows that the prosecutrix Sarabjit Kaur was studying in Govt. High School, Meghowal Ganjian, Hoshiarpur and had taken the middle standard examination. Her mother Ajit Kaur categorically stated that she was 15 years of age on 4.5.2001 when the offence of rape was committed upon her. Even the statement of the prosecutrix also shows that she was 15 years of age. Statement of Sh. M.P. Dhiman, Head Master, Govt. High School, Meghowal Ganjian District Hoshiarpur and the school leaving certificate Ex. PG also point out to the effect that the prosecutrix was 16 years of age. In the face of this evidence, the ossification test pales into insignificance as according to the said test the age of the prosecutrix could be between 16½ years and 19 years. Not only does the school certificate shows the age of the prosecutrix to be below 16 years but the statement of Head Master as well the statement of the prosecutrix herself and the statement of her mother all go to show that the prosecutrix was a girl of tender age. Apart from the above, it has also come in evidence that the prosecutrix had appeared in the middle examination which is also a pointer towards the age of the prosecutrix.

Thus, in view of the above, I am of the categoric opinion that the trial Court has rightly held the age of the prosecutrix to be below 16 years and convicted the accused for the offence under Section 363 IPC.

As far as the offence under Section 376 IPC is concerned, Sarabjit Kaur being girl less than 16 years was enticed away by the accused from the house of Bhajan Kaur on 4.5.2001. Not only the accused-appellant taken her to Bhangi Chow Hoshiarpur on his bicycle but also took the prosecutrix to Mata Chintpuri where he hired a room and committed rape upon her. Thus, the trial Court has rightly held accused guilty under Section 376 IPC also.,

In view of the aforementioned discussion, I have no hesitation in upholding the judgment dated 27.01.2003 passed by learned addl. Sessions Judge, Hoshiarpur and accordingly also uphold the conviction of the appellant under Section 363 & 376 IPC. The sentence as awarded by the trial Court is also upheld. Resultantly, there is no merit in this appeal and the same is dismissed.

The accused is on bail, he shall now be taken in custody forthwith to serve out the remaining portion of his sentence.

(ASHUTOSH MOHUNTA)
JUDGE

16.01.2015
'SP'