

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

Date of decision : 29.11.2019

1. CRA-D-507-DB-2018 (O&M)

Lalu Deen Appellant

versus

State of Punjab Respondent

2. CRA-D-250-DB-2018 (O&M)

Taju Deen Appellant

versus

State of Punjab Respondent

**CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE VIVEK PURI**

Present : Mr. Rahul Sharma, Advocate
for the appellant (CRA-D-507-DB-2018).

Ms. Poonam Josan, Legal Aid Counsel
for the appellant (CRA-D-250-DB-2018).

Mr. H.S.Sullar, DAG, Punjab.

AJAY TEWARI, J. (Oral)

1 This order shall dispose of above mentioned two appeals filed by Lalu Deen and Taju Deen. Since common questions of law and facts are involved therein, they are being decided by this common order. For the sake of convenience the facts are being taken from **CRA-D-507-DB-2018**. It is relevant to mention that allegations are against four persons namely Lalu Deen, Taju Deen, Mureed Deen and Hassan Deen but the appeals have been filed by Lalu Deen and Taju Deen whereas Mureed Deen and Hassan Deen were declared as Proclaimed Offender.

2 These two appeals have been filed against the judgment of conviction and order of sentence dated 12.12.2017 passed by the Additional Sessions Judge, Jalandhar whereby the appellants have been convicted under Sections 376-D IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO') in FIR No.11 dated 29.01.2014 registered at Police Station Adampur, District Jalandhar. The sentence awarded to the appellants is as under:-

Lalu Deen	
Under Section	Sentence awarded
376-D IPC	To undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.20,000/- and in default of payment of fine, he shall further undergo Rigorous Imprisonment for a period of one year.
Section 6 of the Protection of Children from Sexual Offences Act, 2012	To undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- and in default of payment of fine, he shall further undergo Rigorous Imprisonment for a period of six months.
Taju Deen	
Under Section	Sentence awarded
376-D IPC	To undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.20,000/- and in default of payment of fine, he shall further undergo Rigorous Imprisonment for a period of one year.
Section 6 of the Protection of Children from Sexual Offences Act, 2012	To undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.10,000/- and in default of payment of fine, he shall further undergo Rigorous Imprisonment for a period of six months.

3 The above substantive sentences of imprisonment were directed to run concurrently.

4 The brief facts of the case are that on 28.01.2014 at about 7.45 PM, the prosecutrix had gone to take water from Motor. At that time, it was dark and her brother-in-law (Jija)-Lalu Deen-appellant, his brother Mureed along with Taju Deen and Hassan Deen came there on

foot. Lalu Deen gagged her mouth and they all took her to the wheat crop fields at a distance of about 150 meters from her house. First of all, appellant-Lalu Deen committed rape upon her and thereafter, his younger brother Mureed committed rape upon her. Thereafter she became unconscious and did not know as to who further committed rape upon her. When she gained consciousness, she raised alarm and on hearing her, her sister Meena and brother Shauki and other family members as well as their neighbour came at the spot and took her to home where she again became unconscious. Prosecutrix stated that Lalu Deen, Mureed, Hassan Deen and Taju Deen have committed rape upon her by taking her to the field.

5 The appellants were tried and were convicted as mentioned above and hence the present appeals.

6 The prosecution examined prosecutrix-PW1, Meena PW2, Dr. Razia Bhatti PW3, Dr. Monika Chopra PW4, Dalip Singh Draftsman PW5, Surjit Singh PW6, Dr. Sukhwinder Singh PW7, Inspector Jagan Nath PW8, Inspector Avtar Kaur PW9, Shaukat Ali @ Shauki PW10 and Arun Gupta, Judicial Magistrate 1st Class, Jalandhar PW11. In defence, accused examined as many as 11 witnesses besides the statements of Lalu Deen and Taju Deen under Section 313 Cr.P.C., in which they denied all the allegations levelled against them and pleaded false implication.

7 The important witnesses being PW1, PW2, PW3, PW4, PW7, PW9, PW11, DW5 and DW6, their testimony would require a close scrutiny.

8 PW1, prosecutrix deposed that she was about 15 years of age. On 28.01.2014, at about 8.00 PM she had gone to take water from

tubewell behind their house. When she reached there, her brother-in-law appellant-Lalu Deen along with Hassan Deen, Mureed Deen and Taju Deen came. Lalu Deen gagged her mouth, Hassan Deen and Taju Deen caught hold her from her arms, accused Mureed Deen lifted her from legs and forcibly took her into the wheat fields. In the fields, first of all Lalu Deen committed rape upon her and then Mureed Deen committed rape upon her. Thereafter, she tried to free her mouth from Mureed Deen and then she was able to raise shrieks only once. On hearing her shrieks, her sister Meena and brother Shauki came there along with others and then she became unconscious. When she regained consciousness, she found herself in hospital at Adampur. Then she made statement to the police Ex.PA. Her statement under Section 164 Cr.P.C. was recorded by Sh.Arun Gupta, the then Judicial Magistrate 1st Class, Jalandhar as Ex.PB. She identified the accused Lalu Deen and Taju Deen during the course of her deposition in Court.

9 PW2 Meena, sister of the prosecutrix deposed that she was married with Lalu Deen about 4 years ago. They had one daughter namely Ruqsana. Due to strained relations with her in laws, she was living with her parents at Village Ghuriala, PS Adampur, Jalandhar for the last 1 ½ years. On 28.01.2014 at about 8.00 PM she was working in kitchen while her brothers were watching T.V. and the prosecutrix had gone to tubewell to take water. After 15 minutes, she heard some shrieks. She told this fact to her brother Shaukat Ali and then she, along with her brother Shaukat Ali and younger brother Fariad Ali went to the tubewell but they could not trace out the prosecutrix. Then their neighbourer Surjit, his son and his wife also joined them by saying that they have also

heard some shrieks. They all tried to trace the prosecutrix but could not find her. When they went ahead in the wheat fields, they saw Taju Deen, Hassan Deen, Mureed Deen and Lalu Deen running away and the prosecutrix was lying unconscious in the fields. Then she put clothes on the prosecutrix and took her to their house. They made a phone call to their parents. Thereafter they called an ambulance and shifted the prosecutrix to Civil Hospital, Adampur where she was medically examined. Her statement was recorded by the police.

10 PW3 Dr.Razia Bhatti deposed that on 29.01.2014 deposed that on 29.01.2014 the prosecutrix was brought to the hospital for medical examination presented with alleged sexual assault. Her LMP was 27.01.2014. On examination, she found the following :-

“Patient was conscious, co-operative and well oriented.

General Physical Examination :-*BP-110/70 mm Hg, pulse rate 82 per minute. She was conscious and there was no marks of injury on any part of the body (no abrasions/bruises).*

Breast examination :-*Breasts well developed. No injury/scratches marks seen.*

External genetalia :-*Pubic hair present. There was no external injury/inflation/tear seen.*

Per speculum :-*No injury seen on vaginal vault during examination. Hymen not intact but there is no fresh mark/inflammation/laceration/tear seen during examination as patient menstruating.*

Per vaginal examination :-*Two fingers admitting in vagina. No injury felt.*

Samples taken :-

1. *from posterior fornix,*
2. *from introitus (swabs)*

3. *from posterior fornix*
4. *from introitus (slides)*

11 She proved on record the carbon copy of MLR as Ex.PW3/A, report of Chemical Examiner as Ex.PW3/B and further deposed that as per report of Chemical Examiner, she is of the opinion that she was subjected to sexual intercourse.

12 PW4 Dr. Monika Chopra, Radiologist, Civil Hospital, Jalandhar deposed that on 31.01.2014 the prosecutrix was brought by the police for ossification test vide OPD Slip No.G-14019546. A Board of Doctors was formed consisting of Dr.Sukhwinder Singh, Dr.Amarjit Singh Riar and herself. After medico legal X-ray examination for ossification test and dental X-ray, their report was as follows :-

“X-ray done were :-*X-ray right shoulder including medical end of clavicle, elbow, wrist joint, pelvis with hip joint, knee joint and ankle joint.*

Report was :-*bone age is between 14 to 16 years.”*

13 She brought the MLR register and proved the carbon copy of the same on record as Ex.PW4/A and the original X-rays as Ex.PW4/1 to Ex.PW4/7.

14 PW7 Dr.Sukhwinder Singh, Emergency Medical Officer, Civil Hospital, Jalandhar deposed that on 12.08.2014 on the application Ex.PW7/A moved by SI Jagan Nath, he medico legally examined the appellant-Lalu Deen and declared him fit for sexual activity vide report Ex.PW7/A/1.

15 PW9 Inspector Avtar Kaur, Investigating Officer has deposed regarding the investigation conducted by her in the present case and has proved certain documents i.e. statement of the prosecutrix Ex.PA,

her endorsement thereon Ex.PA/1, FIR Ex.PA/2, rough site plan of the place of occurrence Ex.PW9/A, applications moved by her to the concerned doctor of Civil Hospital, Jalandhar Ex.PW9/B, Ex.PW9/C and Ex.PW9/D, application Ex.PW9/E moved by her before the CMO, Civil Hospital, Jalandhar for ossification test of the prosecutrix and the statement of the prosecutrix under Section 164 Cr.P.C. and thereafter the investigation was handed over to ASI Gian Singh and SI Jagan Nath.

16 PW11 Shri Arun Gupta, Judicial Magistrate 1st Class through video conferencing deposed that on 30.01.2014, on the application moved by the police official, he recorded the statement Ex.PB of the prosecutrix. He further deposed that before recording statement of the prosecutrix, he passed an order Ex.PW11/A and after recording statement, he gave certificate Ex.PW11/B. On the application moved by the police the same was allowed vide order Ex.PW11/C and thereafter the said statement along with the orders were ordered to be sealed in an envelope of the Court vide order dated Ex.PW11/D.

17 DW5 HC Ashok Kumar brought the summoned record pertaining to the police complaint addressed to Police Station Indora moved by Bashir Ahmed. He has proved on record, copy of the complaint Ex.DW5/A, copy of notice issued by the Police to Faqru Deen and Hassan Deen in connection with investigation of the said complaint Ex.DW5/B, copy of the statement of Bashir Ahmed as Ex.DW5/C and copy of the compromise Ex.DW5/D.

18 DW6 Harpal Singh deposed that he was Sarpanch of Village Milwan and Chairman of Block Samiti. On 28.01.2014, Bashir Ahmed of his village, moved a police complaint against Hassan Deen brother of

Taju Deen and others and in connection with the said investigation of the complaint, he accompanied Hassan Deen, Taju Deen and others to the police station and the said complaint was compromised between Bashir Ahmed and Hassan Deen in the police station at about 6.30 PM and they remained in the police station Indora from 2.30 PM to 7.00 PM and thereafter, they returned to their village and Taju Deen also accompanied him to the village from police station on the said night. The police from Adampur came to their village to inquire about the case and police recorded his statement qua the facts mentioned above. He proved on record, copy of the identity card issued by Himachal Government Panchayat Raj, District Kangra as Ex.DW6/A.

19 The primary argument raised by the learned counsel for the appellant-Lalu Deen is that this false case has been foisted because there was enmity between the parties in so much as the sister of appellant-Lalu Deen was married to the brother of the prosecutrix while the sister of the prosecutrix-Meena was married to appellant-Lalu Deen and there were differences between the couples.

20 In our opinion, this argument will not cut much ice because enmity is a double edged sword. If as per learned counsel for the appellant-Lalu Deen, the prosecutrix had a motive to falsely implicate the appellant-Lalu Deen then equally the appellant have also had a motive to commit the crime. As per the provisions of Section 29 of the POCSO Act, a presumption of guilt arises which the accused is required to rebut. The medical evidence does suggest sexual intercourse and the mere fact that there are no injuries can also be attributed to the circumstance that a young child who is picked up by 3-4 persons in the dead of night may be

too petrified to offer any kind of resistance and in the absence of any resistance it is not unknown that no injuries take place.

21 In our considered opinion, the assertion of enmity between the families is not enough to rebut the presumption.

22 In the circumstances, the appeal filed by the appellant-Lalu Deen bearing **CRA-D-507-DB-2018** is dismissed and his conviction and sentence is maintained.

23 Coming to the case of appellant-Taju Deen bearing **CRA-D-250-DB-2018** learned counsel for the appellant has argued that he has been able to rebut the presumption because he has satisfactorily proved an *alibi*. As per learned counsel for the appellant there was a dispute between one Bashir Ahmed and the appellant-Taju Deen and on 28.01.2014 (the date of the incident) Taju Deen was present in the Police Station Indora, District Kangra (HP) in connection with that dispute. In support of this there are 7-8 witnesses who have stated that they were also present and one of them was Satpal Singh-DW6, Sarpanch of village Milwan and Chairman of Block Samiti. DW-5 HC Ashok Kumar also appeared and testified that on that day, both the parties had reached Police Station, Indora and a compromise was also effected between them and produced the documents in this regard as Ex.DW5/A, Ex.DW5/B and Ex.DW5/C. Ex.DW5/D the compromise clearly records that it took place at 6.30 PM on 28.01.2014.

24 In the facts of the present case we are of the considered opinion that appellant-Taju Deen has been able to rebut the presumption since his *alibi* has been proved at least to the degree of preponderance of probability. Once that is accepted then it is very difficult to believe that

he could have reached Jalandhar at 8.00 PM which is more than 100 kms in distance.

25 Consequently, the appeal of Taju Deen bearing **CRA-D-250-DB-2018** is allowed and the appellant is acquitted of the charges. Personal bond/surety, if any, stands discharged.

26 Since the main cases have been decided, the pending C.M. Applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

29.11.2019
pooja sharma-I

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No