

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

CRA-D-1037-DB-2011

Reserved on : 15.07.2019

Date of decision : 22.07.2019

Tarsem Lal

... Appellant

Versus

State of Punjab

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Ms.Ravinder Kaur Manaise, Advocate
for the appellant.

Mr.Suveer Sheokand, Addl.A.G. Punjab.

RAJIV SHARMA, J.

This appeal is instituted against the judgment and order dated 13.07.2011 rendered by the learned Sessions Judge, Amritsar, in Sessions Case no.23 dated 03.02.2010 whereby the appellant was charged with and tried for offences punishable under Sections 376, 506 of the Indian Penal Code (in short 'IPC'). He has been convicted thereunder and sentenced as under:-

Under Section	Sentence
376 IPC	Rigorous imprisonment for fifteen years and to pay a fine of Rs.15,000/-. In default of payment of fine, to undergo further rigorous imprisonment for 1 ½ years.
506 IPC	Rigorous imprisonment for two years.

Both the sentences were ordered to run concurrently.

2. The case of the prosecution, in a nutshell, is that complainant Sona (wife of appellant Tarsem Lal) got her statement Ex.PD recorded with

SI Jagdish Chander to the effect that she was married with the accused about 20 years ago. She gave birth to three children. The prosecutrix (name withheld) was her eldest daughter, aged about 17 years. Tarsem Lal was owner of the vehicle. The same was used by him for transportation of vegetables in Vallah Mandi. He was habitual of taking intoxicants, liquor etc. On the intervening night of 04/05.10.2009, the complainant along with her two sons was sleeping in one of the rooms of her house and in other room, the prosecutrix (her daughter) was sleeping. Accused came to the house at about 10.30 P.M. He was under the influence of intoxicants. He after parking the vehicle went to the room of the prosecutrix. He administered some intoxicating substance to her. He committed sexual intercourse with her. He threatened her. In the morning, the complainant saw prosecutrix vomiting. She enquired from her. The prosecutrix told her that during the night the accused committed sexual intercourse with her after administering some intoxicants to her. On the basis of statement, FIR Ex.PD/2 was recorded. The prosecutrix was medically examined by Dr.Rupam Pasricha. The prosecutrix was again got medically examined on 07.10.2009. Accused was arrested. He was also medically examined. The statement of the prosecutrix was also recorded under Section 164 Cr.P.C. before the Magistrate. Investigation was completed. Challan was put up after completing all the codal formalities.

3. The prosecution examined a number of witnesses. Statement of accused was recorded under Section 313 Cr.P.C. He denied the case of prosecution. According to him, he could never think to rape his daughter. His wife started living immoral life to which he was objecting. He was economically poor person. When he started objecting to the same, his wife

initially quarreled with him and by misusing the name of his daughter and by tutoring her, got a false case registered against him. The appellant was convicted and sentenced, as noticed hereinabove.

4. Learned counsel appearing on behalf of the appellant has vehemently argued that the prosecution has failed to prove the case against the appellant.

5. Learned counsel appearing on behalf of the State has supported the prosecution case.

6. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

7. PW-1 Dr.Rupam Pasricha, on medical examination of the prosecutrix, found the following injury:-

“1. A bluish black contusion 2.5 x 1.5 cm was present over left upper back, 7.5 cms below lower end of left scapula. No other fresh external injury was seen on her body, at the time of examination.”

According to her opinion, there was nothing suggestive that the prosecutrix could not be subjected to sexual intercourse. The injury was simple in nature. The probable duration of injury was 3 to 4 days. It was caused with blunt weapon. She reiterated the same view after seeing the report of Chemical Examiner.

8. PW-3 Sona deposed that the accused was her husband. Her marriage took place with the accused two years ago. She had three children. The prosecutrix was the eldest. She was aged about 17 years. On the night intervening 04/05.10.2009 she along with her two sons was sleeping in one of the rooms. In another room, her daughter was sleeping. Her husband came to the house at about 10.30 P.M. He was under the influence of

intoxicants. He parked his vehicle in the street. He went to the room of his daughter. In the morning when she woke up at about 8.00/9.00 A.M., she saw that her daughter was vomiting. She enquired from her as to why she was vomiting. Her daughter disclosed that during the night her father Tarsem Lal administered some intoxicants to her. He removed her *salwar*. He raped her. He threatened the prosecutrix. When these facts were disclosed to her by the prosecutrix, her husband had already gone for work. She disclosed the facts to her relatives. She along with the prosecutrix rushed to the Civil Hospital, Amritsar. In her cross-examination, she deposed that Tarsem Lal was driver by profession. Her daughter was born on 29.08.1992. She had studied up to 10+2. Accused used to go to his work at 4.00 A.M. He used to come back at 10.00 or 10.30 P.M. When accused used to come to the house during late night, he used to take meals. On the day of occurrence, when the accused came to house, she was sleeping and did not meet him. She did not notice him in intoxicating condition. She did not notice the time at which the accused came to house. There were two rooms in the house. She along with her children used to sleep in one of the rooms and in another room, accused used to sleep alone. On the night of occurrence, she was sleeping with her two children. The prosecutrix was sleeping in another room. There was a common wall between these two rooms. During that night, she did not hear any shrieks of her daughter. She did not hear any ruckus from the room where the prosecutrix was sleeping. In the morning at about 7.00/8.00 A.M., she noticed that the prosecutrix was in unconscious condition. She served tea to her husband. He went to work. She visited the room of her daughter also before 7.00/8.00 A.M. She neither took her daughter to any doctor or hospital nor got her medico legally

examined. She did not inform the police within twenty four hours.

9. The prosecutrix appeared as PW-4. She deposed that on 04.10.2009 in the morning at about 10.00/10.30 A.M. her father gave beatings to her and her mother. Her father was habitual of taking intoxicants. At about 10.00 P.M. she was sleeping in her room. Her mother and brothers were sleeping in a separate room. Her father came to the house at 10.00 P.M. on 04.10.2009. He was under the influence of intoxicants. He straightway entered the room where she was sleeping. Accused started rubbing his hands on her breast. He forcibly removed her *salwar*. Accused committed forcible sexual intercourse with her. Accused forcibly put some intoxicated tablets in her mouth and later she was made to drink water. She was threatened. She started vomiting in the morning. Her mother enquired the reasons. She disclosed the reasons to her mother. Her statement was also got recorded under Section 164 Cr.P.C. In her cross-examination, she deposed that there were two rooms in the house. The rooms were adjacent. Accused used to go to work at 4.00 A.M. daily. The economic condition of their house was not good. There used to be dispute between her mother and the accused. Whenever her father used to come to the house during the night, her mother used to serve him meals. On the night of occurrence, her father had come to the house at about 10.00/10.30 P.M. Her mother was sleeping in the same room, wherein accused and her mother used to sleep. At that time, her mother was not sleeping. When the accused started committing rape upon her, she raised noise. However her mother did not come to their room. She did not know if her brothers had heard her cries or not. At that time, they were not sleeping with her in her room. Prior to the incident, both of her brothers were sleeping with her in the same room.

After the incident, when she woke up, she did not find them in the same room. She did not know how they went out of that room. Accused gave her severe beatings before committing rape. In her statement recorded before the Judicial Magistrate, she stated that on the night of 04.10.2009 her father came to the house in drunken condition. He gave severe beatings to her with iron rod and to her mother also. After taking meals, he sent her mother to other room.

10. PW-5 Jagdish Chander deposed that he was posted in Police Station Chheharta on 06.10.2009. He recorded the statement of Sona wife of accused. The statement is Ex.PD. He got the prosecutrix medically examined from the Civil Hospital, Amritsar. She was also got medically examined on 07.10.2009 after she was allegedly administered intoxicants. He moved an application before the Illaqa Magistrate on 20.11.2009 for getting recorded statement of the prosecutrix. In his cross-examination, he deposed that the place of occurrence was about half kilometer from the police station. He was informed of the incident on first time on 06.10.2009.

11. PW-7 Dr. Rajeev Kumar Mehra deposed that the patient was brought to emergency of Civil Hospital, Amritsar, at 11.50 before noon on 07.10.2009 with alleged case of poisoning. The poison was allegedly consumed forty eight hours before arrival of the prosecutrix in the hospital. He referred the patient to Forensic Department, Medical College, Amritsar. In his cross-examination, he deposed that he did not prepare any MLR of the patient.

12. PW-08 Baljinder Singh Sara, Ex.Judicial Magistrate deposed that he was posted as JMIC, Amritsar on 20.11.2009. Police submitted an application Ex.PQ for recording statement of the prosecutrix under Section

164 Cr.P.C. He recorded statement of the prosecutrix. The statement was under his hand. He read over the contents of the same to the prosecutrix. In his cross-examination, he deposed that he had not appended any certificate below the statement that the statement contains true and correct account of whatever, was stated by the prosecutrix.

13. PW-9 HC Amrik Singh deposed that he got the prosecutrix medically examined as per the direction of SI Jagdish Chander. He had taken a sealed parcel from the hospital and then at Police Station handed over the same to SI Jagdish Chander vide memo Ex.PJ.

14. PW-10 Dr.Neeraj Malhotra had medically examined the accused.

15. The Chemical Examiner report is Ex.PB/1. As per report, spermatozoa were detected in the contents of exhibit II. No spermatozoa were detected in the contents of exhibit I. Statement Ex.PD was got recorded by the mother of the prosecutrix. The statement of the prosecutrix recorded under Section 164 Cr.P.C. is Ex.PE. According to the contents of Ex.DA lodged by the prosecutrix, they were three brothers and sister. She was 17 years of age. Her brother Karan was 14 years of age. Her youngest brother Shankar was 7 years of age. Her father was addicted of drinks, opium and intoxicated capsules and tablets. On 04/05.10.2009 she was sleeping in the back room of her residential house. Her mother and brothers were sleeping in other bed room. Her father came back late at night. He slept with her. He took off her *salwar*. She resisted. He raped her. In the morning, he put some poisonous tablets in her mouth and forced her to drink water. He threatened her. She remained silent. In the morning she started vomiting. Her mother saw her vomiting and made enquiries. The

statement of the prosecutrix was also recorded under Section 164 Cr.P.C. by PW-8 Dr.Baljinder Singh Sra. In the said statement, she stated that her father came in a drunkard condition on 04.10.2009. He gave beatings to her and her mother with iron rod. Then her father sent her mother to another room. Her father also sent her brothers with her mother. He did wrong deed with her and later administered some medicines to her. She became unconscious. Her father also forced her to watch some vulgar movies. Her father threatened her. Her father went to work at 3.00 early in the morning. Her mother saw her vomiting. Her mother asked reasons. She narrated the incident to her.

16. There is variance in the contents of statement Ex.DA and statement Ex.PE recorded under Section 164 Cr.P.C. The prosecutrix in her statement recorded vide Ex.DA, stated that she was sleeping in the back room of her residential house on 04/05.10.2009. Her mother and brothers were sleeping in the adjoining room. Her father came in the night. He took off her *salwar*. She resisted. He committed rape. Whereas in the statement Ex.PE recorded under Section 164 Cr.P.C. she stated that on 04.10.2009 her father came in drunkard condition. He gave beatings to her and her mother with iron rod. Then her father sent her mother to another room. He closed the room. He did wrong deed with her. Her father threatened her to kill. When the prosecutrix appeared before the Court as PW-4, she deposed that she was sleeping in the room on 04.10.2009 at about 10.00 P.M. Her father came to house at 10.00 P.M. He straightway entered the room where she was sleeping. He removed her *salwar* forcibly. He committed forcible sexual intercourse with her and administered some intoxicated tablets in her mouth. In her statement recorded under Section 164 Cr.P.C. she deposed

that her father came. He gave beatings to her and her mother. Thereafter her father send her mother to adjoining room. Whereas she while appearing as PW-4 in Court deposed that her father straightway came to the room and committed rape upon her. She has also admitted in her cross-examination that on the night of occurrence, her mother was sleeping in the same room wherein accused and her mother used to sleep and at that time, her mother was not sleeping. She did not know the exact time when the incident took place but it was about 11.00 P.M. At the time of incident, she was in deep sleep. She raised noise when her father started committing rape on her. Her mother did not come to their room. Prior to the incident, both her brothers were sleeping with her in the same room but after the incident when she woke up, she did not find them in the same room. She did not know when they went out of that room. Her father gave her severe beatings before committing rape. Thereafter she became unconscious.

17. PW-3 Sona is mother of the prosecutrix. She deposed that she was sleeping with her two children. The prosecutrix was sleeping in another room. There was a common wall between two rooms. There was a kitchen adjacent thereto. During that night she did not hear any shrieks of her daughter. She did not hear any ruckus from the room. Neither she reported the matter to the police within twenty four hours nor she got the prosecutrix medically examined.

18. In case the brothers of the prosecutrix aged about 17 and 14 years were sleeping with her, they would have definitely raised the alarm. The case of the prosecutrix is that she was given severe beatings by her father. She should have immediately raised the alarm since she knowing fully well that her mother was sleeping in the adjoining room. It has also

come in the cross-examination of the prosecutrix that her mother was not sleeping at that time. It has also come in the statement of PW-3 Sona that she used to serve meals to her husband as and when he used to come to the house. The age of the prosecutrix as per the evidence is 29.08.1992. The defence taken by the accused is that his wife had started leading immoral life. She used to quarrel with him and used her daughter as instrument to fix him. According to the report of PW-1 Dr. Rupam Pasricha, on p/v examination of the prosecutrix, her hymen was found to be intact. Vagina admitted tip of finger. According to the prosecutrix, she was administered some intoxicants by her father. PW-7 Dr. Rajeev Kumar Mehra deposed that he examined the prosecutrix on 07.10.2009. The poison was allegedly consumed forty eight hours before her arrival in the hospital. He referred the patient to Forensic Department, Medical College, Amritsar. In his cross-examination, he admitted that he had not prepared the MLR of the patient. He had not noted down any symptoms or condition of the patient anywhere in his record. The patient was not known to him personally. It was not mentioned in his record as to who had brought the patient to the hospital. According to PW-9 HC Amrik Singh, on 08.10.2009 he had taken a sealed parcel from the hospital and handed over the same to SI Jagdish Chander vide memo Ex.PJ. PW-5 Jagdish Chander deposed that HC Amrik Singh had produced before him a sealed plastic container which was handed over to him by the doctor. He took the same into possession vide memo Ex.PJ. The prosecution has not proved that any intoxicated material was administered by the prosecutrix. PW-5 Jagdish Chander did not take in possession the sample of sperms/DNA of the accused. He had not received the report of Chemical Examiner qua administering of poisonous substance

to the prosecutrix. Thus the version of the prosecutrix that she was administered some poisonous substance due to which she became unconscious, cannot be believed. She was required to be taken to the hospital in case she was unconscious after consuming poison substance immediately.

19. Their Lordships of Hon'ble the Supreme Court in ***Mukesh vs State (NCT of Delhi) and others 2017 (6) SCC 1***, have held that onus of proving guilt is always on prosecution and never shifts even in rape cases.

Their Lordships have held as under: -

"382. In a case of rape, like other criminal cases, onus is always on the prosecution to prove affirmatively each ingredient of the offence. The prosecution must discharge this burden of proof to bring home the guilt of the accused and this onus never shifts. In Narender Kumar v. State (NCT of Delhi), (2012) 7 SCC 171 it was held as under:

"29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. ... There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt."

20. The prosecution has failed to prove the charges against the

appellant. Accordingly, the appeal is allowed and the judgment and order dated 13.07.2011 are set aside. The appellant is acquitted of the charges framed against him by giving him benefit of doubt. The appellant is in custody. He is ordered to be released forthwith if not wanted in any other case. Release warrants be prepared.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 22, 2019.
Davinder Kumar

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