

The State v. Tarun Tejpal: Trauma, Test and Trial inside the Elevator

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Abstract

This paper critically analyses the Judgement passed in the Tarun Tejpal - sex scandal where the latter was accused of rape, using criminal force and wrongful restraint on a female co-worker who was under his superiority. As we move further in the article it focuses on arguments and evidence placed by both the counsels. The article gives a rational view on the issues and how the whole case turned out to be victim blaming and that the accused was bailed out based on the benefit of doubt. The paper analyses the judgement as one of its kind as it paves the way for an ideal rape victim mentality and concludes that there's little we've learnt as a country after Nirbhaya.



Context

The judgement passed in the case of Tarun Tejpal raised a lot of eyebrows as it was not in compliance with the decisions made in such cases in the previous years. It was a case of rape and sexual harassment committed by the editor-in-chief of Tehelka magazine upon one of the leading Journalist of the magazine which happened around 7 1/2 years ago in the grand Hyatt Hotel of Goa. The case also attracted a lot of attention from the media around the world as the name of the victim was highlighted and secondly it was a prominent case where a man who was in a position of superiority was charged with sexual harassment and rape with a woman who was obviously junior to him in the profession.

Facts of the case

It was between 7th to 11th November, 2013 the THINK Fest was organised by the Tehelka Magazine in Goa. It is alleged that during that fest, Tarun Tejpal, the then Editor-in-Chief of Tehelka, had sexually assaulted a female journalist who worked under him in the magazine. It is alleged that he committed the offence of wrongful confinement, sexual harassment and rape on the victim. The prosecutrix had alleged that on 7th November 2013 by making the excuse of waking up the American actor Robert De Niro who was the Chief Guest at the fest and the prosecutrix was chaperoning for him and even shared a physical relationship with him that only lasted during the fest. The accused took her to one of the guest lifts of Hotel where he wrongfully confined her using force against her consent and committed rape on her. Further, on the next night of 8th November 2013 the accused took her to another guest lift and again sexually assaulted her.¹

Issue raised

- Whether the accused has committed rape on the prosecutrix as defined u/s 375 (b) and (d) of Indian Penal Code?

¹ Devika Sharma, *My Report On Tarun Tejpal*, SCC Online (May 30, 2021, 10:12 AM), www.scconline.com/blog/?p=248885.

- Whether accused committed sexual harassment and physical contact by explicit and unwelcomed advantages and overtures to the prosecutrix?
- Whether the accused used criminal force to disrobe the prosecutrix?
- Whether the accused was in a position of dominance over the prosecutrix?
- Whether the accused wrongfully confined the prosecutrix in the lift?

Arguments by Petitioner

The counsel of the prosecutrix contended that the testimony of the victim in cases of rape or sexual harassment crimes is compelling and most importantly there was an apology email which was sent by the accused to the victim and duly presented to the court. All the messages were systematically presented to the court in a DVD. It was contended that the accused confined the prosecutrix with criminal force to disrobe her and then raped her inside the lift. It was also argued that the accused was in a position of dominance over the prosecutrix and so it was easy for him to force her and obtain advantages. It was stated the accused was guilty of outraging a woman's modesty by removing her underwear in a lift and sexually assaulting her. ²

Arguments by Respondent

The Respondent clearly denied all the charges against him and through his counsel stated that the alleged incident didn't happen at all and it was just a drunken banter between the two. The respondents counsel argued that the Investigation officer had not recorded the statements of very important witnesses, the CCTV footage of the first floor where the alleged crime took place was deleted and important evidence were concealed so as to maintain the case of the prosecutrix. The counsel on behalf of the accused contended that the IO concealed the fact the lift couldn't be stopped at one floor as stated by the prosecutrix and the cctv footage shows that the lift opened twice on the ground floor, also the accused exited the lift on the first floor and nothing happened on the night of 7th November 2013. It was argued that the prosecutrix did not make use of physical

² Anna MM Veticad, *The Tejpal Acquittal: NWM India's Critique of the Judgement*, NWM India (Jun. 5, 2021), www.nwmindia.org/statements/the-tejpal-acquittal-nwmis-critique-of-the-judgement/.

force to stop the accused and sustained no injuries neither she informed any police, colleagues or friends and most importantly even after the alleged incident happened she was roaming around freely in the hotel premises which obviously isn't the behaviour of a rape victim.³

Judgment

It was held in the Court that out of six issues raised against the accused of which only one was against the accused rest all being in his favour, dismissed all the charges levelled against him under Sections - 354, 354-A, 354-B, 376(2)(f), 376(2)(k), 341 and 342 IPC and acquitted him. In cases of rape and sexual harassment the sole testimony of the victim can be the basis of the conviction of the accused. But this is only applicable when the testimony is of a Sterling quality, inspires confidence and at the same time is very trustworthy. The court held that in the present case the prosecutrix has time and again changed her statement and the court always has heard different versions of a story from her side, Prosecutrix made many false and inconsistent statements and also lied about her intimate relationship with one of the defence witnesses. The court observed that the CCTV footage that was presented did not support the statements made by the prosecutrix and glaring contradictions were seen in relation to her statements and the CCTV footage that was captured. The court clearly stated that The CCTV footage does not support the statement that the prosecutrix was in extreme trauma and blinking tears as per her statement. After scrutinising the flirtatious WhatsApp messages the court observed that it contains various discrepancies at the same time she was again and again changing the original version of a story and it was observed that the prosecutrix was indulged in sexual talks with a lot of our colleagues to which the court said that the prosecutrix has the propensity to indulge in sexual Conversations. All the WhatsApp messages between the accused and the victim on the night of 7 November 2013 were carefully examined by the court and it was stated that as the victim never refused the claim of the accused of the conversation being a drunken banter the court ruled in favour of the accused. There was a huge lapse in the investigation and the most important and crucial evidence was the CCTV footage of

³ Harini Calamur, *Tejpal case verdict: Why do we want a prototype of the rape victim stricken with shame, asks Harini Calamur*, The Free Press (May 31, 2021, 12:32 a.m.), m-freepressjournal-in.cdn.ampproject.org/c/s/m.freepressjournal.in/article/analysis/tejpal-case-verdict-why-do-we-wan-t-a-prototype-of-the-rape-victim-stricken-with-shame-asks-harini-calamur/fec05217-653c-4ee5-a458-86c9d4ec5865.

the first floor of the Hyatt hotel in Goa where the alleged crime was committed went missing and crucial witnesses had their statements unrecorded. All in all the court concluded that The statement made by the prosecutrix that she was wrongfully confined using criminal force in the lift by the accused could not be proved. As for the apology email that was sent by the accused to the prosecutrix the court held that there was absolutely no confession made by the accused of any incriminating fact that he committed assault on the prosecutrix And that email is not a reply to any mail which was sent by the prosecutrix containing allegations of assault and that mere claim that allegations were not denied does not amount to confession. Calculated actions of the prosecutrix, Sustaining no injury and not fighting back or giving any sort of warning to the accused played against the claims of the victim and hence the court was of the view that Allegation of rape and sexual harassment couldn't be proved by the prosecution beyond reasonable doubt.

Critical Analysis

This judgement passed by the Goa court is a sheer example of dissecting evidence beyond the language of sexism. It has time and again been stated by the various courts that the sole testimony of the victim in case of rape and sexual harassment matters is enough for the conviction of the accused but in this case the changing stories of the victim and her false statements in various matters took a toll onto her case. The court raised many eyebrows when it stated that the behaviour of the victim wasn't in compliance with that of a rape victim at the same time she did not use all possible escapes to get out of the situation. The absence of medical evidence and the refusal of the victim to show her email played the key role in the acquittal of Tarun Tejpal. It was the first case in the history of India, a case of sexual harassment and rape where the witnesses and the evidences weighed more than testimony of the victim, ethics and morals which govern such cases.⁴

There is certain behaviour that a sexual harassment victim must portray to make believe that she was actually harassed which was actually very laughable at this point in the century where little girls

⁴ Jhuma Sen, *The State's attitude towards rape law reform has been historically reactionary*, The Indian Express (Jun. 6, 2021, 8:39 a.m.), indianexpress-com.cdn.ampproject.org/c/s/indianexpress.com/article/opinion/columns/how-about-an-ideal-rape-trial-7345865/lite/.

with pious minds are exposed to as dangerous crimes as rapes! It can be undeniably stated that the court directs to identify what amounts to an “*AADARSH RAPE*”, is there a prototype for a victim to whom heinous crimes have been committed? Is it necessary for a survivor to abide by the stereotype that has been created over the years? In all this, rape was seen as the woman not doing enough to protect herself.⁵ Her virtue wasn't strong enough to protect her. Women in the olden days were expected to take the honourable way out by ending their lives in shame. If such an incident happened to them and if the rapist offered marriage then that was considered a win-win situation. If a survivor dared to continue with her life setting aside the baggage of rape she would be judged. How dare she not die? How dare she continue with her life? How dare she enjoy her life?

Proved by this the thought process of the Judiciary is pretty clear in cases of heinous crimes that the conduct of the victim during and after the alleged crime carries paramount importance and not the fact that her modesty was actually outraged, she was raped consecutively for two nights and that she was actually brave enough to come out about it! It couldn't have been more nastier than Tarun Tejpal being acquitted. If one digs up the judgement furthermore it seems as if it is stuck on the fact “she was asking for it” and for this, the author feels that if she was asking for it why couldn't he? The court has various paranoid statements to make such as - it was common for the victim to engage in sexual conversations with people from the professional fraternity at the same time the victim didn't push or make a move to hurt the alleged rapist as she was a yoga trainer she must be alert, fit, intelligent and unattackable!⁶

The court resorted to the CCTV footage and gave benefit of doubt to the accused which is extremely disturbing as the pillars of legal bodies; judges must be more sensitised to the issues of gender based violence and stop victim blaming. It was a clear case where a woman was assaulted, the alleged rapist confessed he did it through a mail with a subject as Atonement, which said:

⁵ Jhuma Sen, *At heart of Tarun Tejpal judgment is issue of consent, which is central to rape law, this case, and how courts deal with it*, First Post (Jun. 4, 2021, 10:43 a.m.),

www.firstpost-com.cdn.ampproject.org/c/s/www.firstpost.com/india/at-heart-of-tarun-tejpal-judgment-is-issue-of-consent-which-is-central-to-rape-law-this-case-and-how-courts-deal-with-it-9683491.html/amp.

⁶ Mahima Vashisht, *Lessons from the Tarun Tejpal judgment*, Womaning in India, womaning.substack.com/p/lessons-from-the-tarun-tejpal-judgment.

“I apologise unconditionally for the shameful lapse of judgement that led me to attempt a sexual liaison with you on two occasions on 7 November and 8 November 2013, despite your clear reluctance that you did not want such attention from me.”

There were contemplations from the alleged rapist that the incident never actually occurred, that he was never in the lift and that the victim flirted with him unilaterally and it was mutual sexual banter. It seems that attention has been paid to entertaining WhatsApp chats and glaring emails that would not only minimalise the victim rather than bothering on the issue whether the victim had been subjected to sexual assault on that day or not. So whenever one reaches out for justice, especially if one is a woman, remember that one’s name would be made public, one would get classes on virginity and chastity and most importantly everyone else present in the court premises would be on trial except the accused.

All knowledge, education and wisdom was used as evidence against the victim. The police messed up the case big time as the investigation had a lot of lapses starting from missing witnesses to missing cctv footage of the day in question. It’s sad to observe that we have had a survivor on trial quite a few times, actually a lot more than normal times. The judgement reinstated the “ideal victim” mentality and how little the judiciary has learnt over the years of increasing violent crimes against women. It was a template checklist for a rape victim and it was pretty clear from the judge’s point of view that she took a one-size-fits-all approach to conclude the case in favour of the alleged rapist. As much as the author supports the fact that no innocent should be punished, the author is a firm believer of the quote *“criminals should be punished and not fed pastries.”*

