

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1107 of 1999**

- Gotu @ Daluwar Singh, aged about 36 years, son of Dragpal Singh, resident of village Rajhapura, Devipur, P.,S. Soorajpur, Distt. Sarguja, M.P. --- **Appellant**

Versus

- State of Madhya Pradesh (Now Chhattisgarh) through Police Station Surajpur, Distt. Sarguja, --- **Respondent**

For the applicant	:	Mrs. Ranjana Jaiswal, Advocate
For the State	:	Mr. Samir Behar, Panel Advocate.

Hon'ble Shri Justice Goutam Bhaduri**JUDGMENT/ORDER ON BOARD****05.05.2017**

1. This appeal is against the order dated 23rd Sept. 1998 passed by the Additional Sessions Judge, Surajpur, Distt. Sarguja (C.G) whereby the appellant was convicted for the offence punishable under section 376(1) of IPC and sentenced to undergo R.I., for 5 years along-with fine of Rs.200/-, in default of payment of fine, the appellant was further directed to undergo additional R.I., for one month.
2. Brief facts of the case are that the applicant and victim both were residents of village Devipur. Husband of the victim namely Gurusai (P.W.3) was the Kotwar of the same village. The Kotwar used to collect grains from the villagers as remuneration for rendering his service as Kotwar. Since some theft took place in the village and the police had come to enquire the said incident, the husband of the victim was present in the house of one Goverdhan where the police had reached. At that time, the wife had gone to collect the remuneration from villagers which was paid by way of grains

(Paddy). It is case of the prosecution that when she was coming out of the house of Mahesh at Kwarpara, the appellant who was sitting at the door caught hold of her hand, thereafter dragged her to cattle house which was situated in nearby premises and asked to fulfill sexual desire which was refused by the prosecutrix. Subsequently, the appellant caught hold of the prosecutrix, gagged her mouth, took her into a cattle room and forcibly committed sexual intercourse. After the incident, the victim went roaring to her house and disclosed the incident to her husband. Thereafter, the FIR was lodged vide Ex.P-1. After lodging of the FIR, she was referred to medical examination, however, after examination conducted by the lady doctor, no definite opinion was given by her. Subsequently from the place of incident, the broken pieces of bangles and further the garments of prosecutrix were seized from her and the appellant was arrested. Subsequently, the garments were sent for FSL. However, no report was received till the trial was concluded. Thereafter after the investigation, the charge sheet was filed. During the course of trial, the appellant abjured his guilt, pleaded his innocence and claimed to be tried.

3. The prosecution on its behalf examined the prosecutrix as P.W.1, one Dev Narain, the villager, P.W.2, Gursai, the husband of the prosecutrix as P.W.3, Dr.Hot Chandani as P.W.4, Rakesh Pratap Singh (P.W.5) who recorded the statement of witnesses and Dr. Smt. Chandrakanti Rai as P.W.6 who examined the prosecutrix. The trial Court after evaluating the entire evidence and statements of witnesses

convicted and sentenced the the appellant as aforesaid.
Hence this appeal.

4. Learned counsel for the appellant would submit that the conviction of the trial Court in this case is completely illegal and the trial Court has failed to assess the evidence in proper perspective as the reading of the entire evidence would show that the prosecutrix was a major lady of 42 years and was a consenting party. It is submitted that at the time of incident, since she was seen in a compromising position by few of the villagers, as such, in order to avoid such allegations, report was made. It is submitted that the Doctor in this case has also not supported the fact that she was subjected to rape and the FSL too was not placed by the prosecution before the Court. Therefore, she would submit that the conviction may kindly be set aside.
5. On the other hand, learned State Counsel opposes the arguments and would submit that in the facts of the case, the impugned order/judgment of the trial Court is well merited which do not call for any interference and the appeal be accordingly dismissed.
6. Perused the statement of prosecutrix (P.W.1). It is stated that she had gone to the house of one Dhobhi to ask for remuneration of her husband being Kotwar of the village and while she was coming out, the appellant met her and caught hold of her hand and thereafter took her to a nearby place and committed rape. It is stated that at the time of incident, some of the children were playing inside the courtyard and some were playing outside and they had seen the incident. It is stated that the boys were aged about 9 to 10 years. In the

cross examination of witness, she has stated that she went to the house of one Ramratan Dhobhi and while she was coming out, the appellant came to the door caught hold of the hand of prosecutrix. She further stated that she had not scratched the accused to get herself released. She further stated that at the time of happening of the incident, she had also not kicked the applicant and by force and she was made to lie on the floor. It is further stated that while he was committing rape, she was conscious. In the statement of prosecutrix, she stated that she was dragged to the cattle house and rape was committed.

7. The map of the place of incidence is proved as Ex.P-7. Ex.P-7 would show that at the place marked as 1, the appellant committed rape. The place of incident is shown to be surrounded by different rooms. The area marked as 4 is shown as the place where the appellant forcibly caught hold of the prosecutrix and dragged her to the place of incident. The area marked as No.4 is a road and as abutting that road, the house of one Itwar Sai is shown. From the road to the place of incident there appears to be some distance and at the place marked as 6, some boys were shown to be playing outside and some were playing inside. Ex.P-7 shows the courtyard wherein certain boys were playing. Therefore, the place of incident was densely surrounded by different places and one of the room shown therein is also nearby the courtyard wherein wife of one Ramratan was shown to have been cooking.
8. At this juncture, the statement of one Manmit wife of Ramratan which is marked as Ex.D-1 becomes relevant.

Ex.D-1 is stated to be recorded by P.W.5 Rakesh Pratap Singh. At serial No.5 of Ex.P-7 the room in which the wife of Ramratan was cooking is shown to be adjacent to the courtyard as also to the place of incident. According to witness Manmit, after giving remuneration to the victim, she started cooking in her house and just after some time her grandson Anil came there and stated that the appellant had caught hold of the victim and took her to the *Dhabha*. She also stated that the boy further disclosed that he along-with Ashok, Devnarain, Kirit, Santosh they were playing in front of the house at the time when the accused dragged and took victim and they also went to see inside the Dhabha and saw that the appellant was lying over the victim and she was lying naked under him and the rape was being committed. Thereafter when the appellant saw watching them in compromising position, he abused the boys and asked them to flee away from the spot. Thereafter, the witness Manmit told it to her husband Ramnarayan. The statement of one Santosh which is marked as Ex.D-2 would show that he had also seen that the prosecutrix was being taken by the appellant by dragging into Dhabha.

9. The medical report in this case is proved as Ex.P-6A which do not show that any injury was sustained by the victim. It further reveals that the prosecutrix was habituated to sexual intercourse. If the entire evidence is examined, the map of the area (Ex.P-7) becomes relevant which shows that the place of incident is adjacent and surrounded by other rooms. The statement of Manmit (Ex.D-1) read with map (Ex.P-7) would show that while she was cooking in the adjacent room,

the incident happened. Had there been any resistance or any hue and cry by the prosecutrix, the witness Manmit could have easily heard the same, but the evidence has come on record that even if she was cooking in the adjacent room, she did not hear any voice and subsequently when it was disclosed by her grand son and other children, she came to know.

10. The statements of the children which were disclosed would show that they saw the appellant and prosecutrix in the compromising position and at that time, it is not stated that the prosecutrix was resisting the incident. The place which is proved by the prosecution that the prosecutrix was caught hold is a road and as abutting this road i.e., on the other side, the house of one Itwar Sai is also shown to be existing. The evidence of prosecution shows that no resistance was made and the place where the boys were playing is just adjacent to the place where the prosecutrix was caught hold. Had there been any resistance, the prosecutrix would have tried to save herself which could have easily heard by the other persons of the same vicinity. The statement of prosecutrix and the cross examination also do not inspire confidence that she was actually resisting the cause to happen. The medical report also do not support that she was subjected to forcible rape as it was stated that she was thrown forcibly into the floor but the medical report shows that no injury was seen on the prosecutrix.
11. Considering the totality of the facts and circumstances and after evaluating the evidence I am of the opinion that the Court below has failed to appreciate the evidence in proper

perspective. Consequently the impugned judgment of conviction and order of sentence dated 23.09.1998 passed by the learned Additional Sessions Judge, Surajpur cannot be sustained. Accordingly, the appeal is allowed and the conviction and sentence are set aside. It is stated that after committing the default in appearing before the Registry, the appellant was taken into custody. The appellant shall be released forthwith if not required in any other offences.

**Sd/-
GOUTAM BHADURI
JUDGE**