

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 251 of 2014**

- Balkrishna @ Guddu Chauhan S/o Kalicharan Chauhan Aged About 34 Years R/o Village Bilaspur, Ps Bhupdeopur, Civil And Rev. Distt. Raigarh C.G. --- **Appellant**

Versus

- State of Chhattisgarh through the Police Station Bhupdeopur, Civil & Rev. Distt. Raigarh C.G. --- **Respondent**

For the applicant	:	Mr. Ashish Gupta, Advocate
For the Respondent	:	Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Judgment/Order on Board****15.05.2017**

1. This appeal is against the judgment/order dated 18.02.2014 passed by the learned Additional Sessions Judge (FTC), Raigarh, in Sessions Trial No.49/2013 whereby the appellant has been convicted under section 376 of IPC and sentenced to undergo R.I., for 8 years and to pay a fine of Rs.4000/-, in absence of payment of fine, additional R.I., for 4 months has been awarded.
2. As per the prosecution case, the prosecutrix who was admitted to be a major lady was resident of village Chaple. She was married to one Shanker Chauhan a year back who was resident of Bhupdeopur. Thereafter she started living at Bhupdeopur at matrimonial house. On 02.02.2013 at 9.00 a.m., while the prosecutrix was waiting at Bhupdevpur Railway Station, the appellant came there and asked her where she is going on which she replied that she is going to Chaple via Robertson. The accused told her that he is

going to Kharsia for bringing goods by his motorcycle and offered her to accompany him with an assurance that she would be dropped at Chaple. The prosecutrix believing his statement accompanied the appellant in his motorcycle. Subsequently the appellant took her to Jhitipali forest passing through Binjhkot and on being asked by the prosecutrix where he is going, the appellant stopped the bike in the forest thereafter dragged her inside the forest and forcibly committed rape on her. Further threat was extended that she will face dire consequences if the incident is disclosed to any one. Thereafter, she was left at Chaple at about 3 p.m. The prosecutrix after reaching home, disclosed the incident to her father-in-law and on the next date disclosed the fact to her husband and mother-in-law and eventually a report was lodged which was registered as Crime No.16/2013. The Police during investigation recorded the statement of the prosecutrix. She was medically examined and the garments were also seized. This apart, statements of different witnesses were recorded and charge sheet u/s 376 IPC was filed.

3. During the course of trial the appellant accused abjured guilt and claimed to be tried. The trial Court after evaluating the entire evidence, facts and circumstances of the case convicted and sentenced the appellant as aforesaid. Hence this appeal.
4. Learned Counsel for the Appellant would submit that the prosecutrix was major lady, she was in relation with the appellant as on the date of incident and she herself had joined the company of the appellant, therefore, she was

consenting party. It is further submitted that instead of going to the place of destiny i.e., *Chaple* she was taken to Jhitipali forest through different routes and passed through different villages and despite that neither she objected to it nor any resistance was made instead she accompanied the appellant and thereafter, the incident happened which cannot be termed as rape. Therefore, the appellant may be acquitted of the charges and the impugned judgment and conviction be set aside.

5. Per contra, learned State Counsel opposes the contention raised by the appellant and submits that the order of the court below is well merited as it has been passed after evaluating the statement of the prosecutrix D.W.3, therefore, no valid reasons exist to interfere in the impugned judgment/order and the appeal may be dismissed.
6. Perused the evidence and documents exhibited. The record would show that on incident being reported, the FIR was lodged on 03.02.2013 vide Ex.P-5. A perusal of the FIR would show that while the prosecutrix was waiting at Bhupdeopur Railway station, at that time, the appellant came there and offered her to give lift to Chaple where the prosecutrix wanted to go. However, instead of going to Chaple, they went to Jhitipali forest passing through villages Jaimura, Mura, Raksapali, Kurubhata, Darramuda, Binjkot. On being asked by the prosecutrix where he is taking her, the accused replied that the said route is also leading to Chaple and thereafter, he stopped the bike and she was dragged to some distance where she was thrown on the ground and thereafter she was subjected to forcible rape. The prosecutrix is

examined as P.W.3 before the trial Court wherein also likewise statement was given. It is stated that she knew the appellant, therefore, she accompanied him and when she reached to Jhitipali forest initially the prosecutrix was assaulted by club and thereafter she was thrown to the ground whereby she sustained injuries and the blood has also come out of the injuries. It is further stated that her hands were tied with Sari, therefore, she did not make any effort to run away. It is further stated that while she was subjected to sexual intercourse she was also assaulted on her breasts by biting whereby the blood came out. It is also stated that in resistance, the prosecutrix also assaulted the appellant whereby he sustained injury on his leg and blood also has come out.

7. Dr. Lalita Rathia in this case is examined as P.W.7. She has stated that on external examination no injury was found as also on internal examination no injury was found and the victim was habituated to sexual intercourse. The M.L.C., is proved as Ex.P-11 which categorically shows that "no external injury was seen anywhere in the body" and on internal examination, it also shows that no injury was seen on vagina and vulva. Therefore, the statement of prosecutrix that she sustained injuries on different parts of the body is being negated by the doctor who examined the prosecutrix on 03.02.2013 after a day of incident.
8. Further perusal of the statement of prosecutrix would show that she has stated that she was taken to Jhitipali forest and she was initially assaulted and her hands were tied with the help of her Sari and thereafter rape was committed. The fact

of tying of hand is absent in the statement recorded u/s 161 Cr.P.C., of the prosecutrix which is marked as Ex.D-1. A perusal of Ex.D-1 would show that no such statement has been made that her hands were tied with her Sari. This statement is also corroborated by the statement of I.O., P.W.9 J.S. Dubey wherein he has deposed that the prosecutrix has not stated anything in respect of the fact that the hands of prosecutrix were tied with her Sari. Therefore, the major omission appears to have been existing in the statement of prosecutrix in respect of the statement given in the Court. The said fact of tying the hands with Sari became significant for the reason that by addition and improvement of the statement, the prosecutrix has tried to project that she could not resist and force was used, as such, taking into such improvement in the statement, the omission and contradiction made in statement u/s 161 of Cr.P.C., will have direct bearing with consent. The statement of the prosecutrix would also show that it is stated that while her hands were tied, her legs were free. However, she did not make any effort to run away, therefore, that part of the statement of prosecutrix becomes doubtful about the use of force on her. With respect to place of incident, the prosecutrix P.W.3 stated that while she was waiting at Bhupdevpur railway station the appellant came there and offered her to give lift to her maternal home at Chaple. When she accompanied him, she was taken to Jhitipali forest instead of Chaple.

9. The site map prepared and proved by Patwari Pila Babu Nagawanshi (P.W.8) is placed on record vide Ex.B-13. It

would show that in order to reach Jhitipali forest from Bhupdevpur Railway Station, it has to pass through 4-5 different villages and the place of incident which is marked as 1 would show that it was inside from the road and the road which is shown as forest road passes through inside the forest. In this regard, the statement of P.W.9 J. S. Dubey is relevant wherein it is stated that in order to go to Jhitipali forest, the road passes through Jaimura, Mura, Raksapali, Kurubhata, Darramuda, Binjkot and it is quite a long route and except this no road is available to reach Jhitipali forest. He also stated that all the villages which fall on the road are big villages where large number of people live in and in few of villages, the road passes through in the middle of those villages whereas in some other villages, the road was situated outside. With respect to place of incident, it is stated that the place of incident was 200 meters inside from the Jungle road. Now if the statement P.W. 3 is again examined with respect of place of incident, it would show that while she was going along-with the appellant on his motorcycle with her consent, instead of going to Chaple, she passed through the road to reach Jhitipali forest and they stayed for two hours and thereafter came back along-with appellant to Chaple and admits the fact that while coming back, nothing was disclosed to anyone and for the the first time, it was disclosed to her husband through mobile at 8.00 p.m. This fact is absent in the statement of husband Shankarlal Chauhan (P.W.5). He has not stated that this is reported to him first time by the wife.

10. The Statement of P.W.8 Patwari would show that Chaple

where the prosecutrix wanted to go falls on the Raigarh - Kharsia highway and it does not fall on the road of Bhupdevpur - Badbhauna Edu Road wherein the prosecutrix travelled. It would further show that he stated that the villages Binjkot, Jhitkipali and Jabalpur fall on the route of Singhanpur Badbhauna Edu. He also admits that the length/distance of Road Singhanpur-Badbhauna Edu is 15 Kms, where the people travel continuously. Therefore, if the statement of prosecutrix is evaluated with respect to the place of incident, certain omission appears to have been existing which do not inspire confidence. It shows that the prosecutrix who is major and resident of the area did not object to the fact while she was travelling to Chaple along with the applicant on his motorcycle. The map and the statements of witnesses i.e., P.W.8 and P.W.9 would show that Jhitipali forest was on different road and the place where the accused committed rape is at a distance of 15 Kms., and the villages Bhupdeopur, Lodhjar, Raksapali, Kurubhanta, Binjkot fall on this route and after passing through these villages by motorcycle, the appellant and prosecutrix reached the place of incident. If she is not a consenting party, she could have raised alarm or objection, instead, she kept quiet. Further when it is stated that her hands were tied with the Sari, the same fact is missing in her statement recorded u/s 161 Cr.P.C. Ex.D-1. Further the narration of the incident would show that she did not run away from the place of incident when only her hands were tied.

11. Considering the same and the totality of the evidence, the

statements of prosecutrix do not inspire confidence to be accepted as gospel truth and therefore, the benefit of doubt leans in favour of the appellant. Consequently, taking into totality of the facts and circumstances and the evidence as a whole, I am inclined to allow this appeal. Accordingly the appeal is allowed and the judgment of conviction and order of sentence passed by the court below is set aside. It is stated that the appellant is in jail. He shall be released from jail forthwith if not required in any other offence.

**Sd/-
GOUTAM BHADURI
JUDGE**