

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 534 of 2014**

- Budhdu Singh Gond S/o Shri Dhansay Gond Aged About 40 Years R/o Village Naka (Chanwaripara), Police Station Marwahi, Distt. Bilaspur C.G.

---- Appellant**Versus**

- State of Chhattisgarh Through Police Station Marwahi, Distt. Bilaspur C.G.

---- Respondent

For Appellant	:	None
For Respondent/State	:	Shri SRJ Jaiswal, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****13/08/2018**

1. This is an appeal against the judgment dated 15.04.2014 passed by the Additional Sessions Judge, Pendra Road, Distt. Bilaspur in S.T. No.34/13 whereby the appellant has been convicted under Sections 376 & 450 IPC and has been sentenced for 7 years RI under Section 376 IPC and a fine of Rs.200/- and in absence of payment of fine, additional 1 month RI was ordered for and has been sentenced to 2 years R.I. under Section 450 IPC and fine of Rs.100/- and in absence of payment of fine, additional 15 days RI was ordered for.
2. No one appeared for the appellant despite several calls.

3. As per the prosecution case, a report was made by the prosecutrix on 29.03.2018 that after consuming meal when she was in her house along with her two daughters at about 12 o'clock in the night, the accused came to her room, caught hold of the prosecutrix dragged her and pulled her into his leg. When she got up from the sleep, she saw that it was appellant and thereafter she was dragged into different room where the goats were being tied and she was made to lie down on the floor and forceful rape was committed after closing her mouth. After the incident when the appellant removed his hand, the prosecutrix cried for help, at that time her husband and the neighbours came, the appellant pushed her and fled away. Subsequently, the report was made, the accused was arrested and thereafter after making examination and completion of other evidence, the charge-sheet was filed.
4. During the course of trial, the appellant abjured the guilt and claimed to be tried. The prosecution on their behalf had examined as many as 9 witnesses. The trial Court after evaluating the facts and evidence, convicted the accused as aforesaid. Hence this appeal.
5. No representation is made by the counsel of the appellant despite repeated calls.
6. The record contains a letter dated 20.02.2018 sent through the appellant to the Additional Registrar (Judicial) for hearing, but unfortunately, no advocate appeared despite engaged by the appellant. Consequently, under the circumstances, taking into the request of the appellant, the appeal is heard and

the record is perused.

7. Learned State counsel submits that the order of the Court below is well merited which do not call for any interference.
8. Perused the record. Perusal of the record would show that the prosecutrix in this case was examined as PW-1. She narrated in her statement that while she was sleeping in her house along with her two daughters, her husband had gone to neighbours place at about 12 o'clock in the night, the appellant came inside the room, thereafter, caught hold of the prosecutrix and dragged her to a adjacent room, wherein the goats were being tied, then made her to lie down on the floor and committed forceful sexual intercourse. She has further stated that after committing rape, while he was going away, the prosecutrix cried for help, hearing the same her brother Itwar Singh and sister-in-law Shyamvati came there. She further explained that while committing the rape, her mouth was closed, as such she could not raise any voice and subsequently, the report was made. In the cross-examination, the witness stated that on the next date the report was made. At the time of report his brother Arjun, brother-in-law, her husband and village Kotwar Manohar Panika had went to lodge the report, then they were advised to give a written report and the same was drafted with the help of Kotwar. Subsequently, on the report for 2-3 days no investigation was carried out. Thereafter, they went to an advocate and asked for redressal of their grievance. It is elaborated that after 8-10 days of the incident, the prosecutrix, her husband, brother & brother-in-law went to an advocate and showed the report and the advocate after perusal of it said that on that report

nothing would be done, thereafter, the advocate had drafted the report and it was presented before the Additional Superintendent of Police, Pendra Road and after that report, the appellant was arrested.

9. In the cross-examination, certain advise were given that the appellant had went to the house of the prosecutrix as he was a invitee, in the suggestion it was admitted by the prosecutrix that in Panchayat whenever it is held it was being headed by Budhdu Singh, the appellant, and therein the accused used to levy the fine to different parties as per Panchayat. She further admitted that the appellant lodged a report against the husband of the prosecutrix at Marwahi and before the report was lodged, a Panchayat was also held in the village. She admitted the fact that the room where from she was dragged is sleeping room to the room wherein the goats were tied, the place of incident, the distance is between 15-20 feet. She admitted that while she was dragged the appellant was holding one of her hand, the other hand was free. She further stated that she could not snatch away her hand because she was in the deep sleep. With respect to the identity, she further stated that while the appellant was running away, it was seen by her brother and sister-in-law from back meaning thereby the face was not seen.

10. The witness Chote Lal (PW-2), the husband of the prosecutrix, stated that he had gone to sleep in the house of one Bajrang. In his house, his wife and two daughters were there. He further stated that at about 12 o'clock in the night when he came to his house, he saw that the appellant was standing in the room where the goats were tied and his wife was also standing there. Having asked

the wife, how she was there, she stated about the incident of rape. He also affirmed the fact that initially when the report was made, no action was taken by the police, thereafter, they had went to an advocate to prepare report, thereafter, the report was made.

11. Itwar Singh (PW-3), the brother of the prosecutrix also made statement on the same line that after hearing the voice of his sister i.e. the prosecutrix, he went to the house of the prosecutrix, he saw the appellant there and it was disclosed by the prosecutrix that she was subjected to rape.
12. Shyam Bai (PW-4) appears to be a hearsay witness so not of much consequence. Samaliya (PW-5), the daughter of the prosecutrix, stated that she was sleeping with her mother i.e. the prosecutrix and sister. At about 12 o'clock in the night, the appellant came there caught hold of her mother, closed her mouth, thereafter, dragged her to the room wherein the goats were tied. She has further stated that all the facts were narrated to her by her mother.
13. The map of the place is marked as Ex. P-7. The incident and the place where the prosecutrix was shown to be sleeping are attached to each other and according to the prosecutrix it was at a distance of 15-20 feet.
14. The Kotwar, Manohar Lal (PW-6), who is the independent witness, was declared hostile and he has stated that the prosecutrix has told him that the appellant had entered into the house and has tried to outrage her modesty. This witness was declared hostile.
15. The doctor Smt. Subhadra Paikra in this case was examined as PW-7, who had

examined the prosecutrix and according to her report (Ex P-1), the prosecutrix was habituated to sexual intercourse as was aged about 40 years. She has stated that no injury was found over the body of the prosecutrix and the slide which were prepared were given to the prosecution and vaginal slide report is not on the record.

16. If the statements of prosecutrix PW-1 are read together with the statement of the doctor Smt. Subhadra Paikra (PW-7), the daughter Samaliya (PW-5) and the husband Chote Lal (PW-2), the same appears to be lack of credence. According to the statement of the prosecutrix, the prosecutrix was dragged to 15-20 feet, which is as per the map Ex. P-7, it is obvious that if she wanted to resist, she could have resisted and could have raised alarm. It is difficult to presume that the prosecutrix would wait till the rape is committed and after the rape she will raise alarm. The fact that she could not resist while she was dragged as she was in sleep is completely improbable because if a person is dragged then automatically he/she will come out of the sleep to resist with full force.
17. The enmity in between the appellant and the husband of the prosecutrix and the other family members have also been admitted by the prosecutrix. It is stated that before the incident, the appellant had made a report to the police about some assault and quarrel, for which a panchayat was also held. The Kotwar Manohar Lal (PW-6), who is the independent witness has not supported the case of the prosecution and stated that the prosecutrix came and narrated that only the appellant tried to outrage her modesty and the allegations of rape

were not there at the first instance. The narrations are factually corroborated by the statement of the prosecutrix in the cross-examination that initially when the report was made, the police did not act on it, subsequently, they went to one advocate and the report was prepared, therefore, obviously the addition of rape was made subsequently, which was not made initially. In the medical report, no injury was found. Under the circumstances, after evaluating the entire facts and evidence available on record, the prosecutrix statement is not corroborated fully by the statements and overlapping contradictory statements have come. The statement of the prosecutrix on totality do not inspire complete confidence so as to act upon it. In a result, it gives an inference that either the prosecutrix was a consenting party or because of the enmity with the husband of prosecutrix and the false report was made against the appellant. In such case, the benefit of doubt has to lean in favour of the appellant. In view of this, I am of the opinion that the conviction so made by the Court below cannot be sustained.

18. In view of the discussion supra, the appeal succeeds and is allowed.

Consequently, the judgment of conviction and order of sentence passed by the learned trial Court cannot be allowed to sustain and is hereby set aside. The appellant is acquitted of the charges leveled against him. The appellant is in jail. He be released forthwith, if not required in any other case.

Sd/-

Goutam Bhaduri
Judge