

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1019 of 2012**

Kirtan Nishad, S/o Ramsatta Nishad, aged about 36 years Occupation Fisherman R/o Sambalpur, P.S. Bhanu Pratappur, Distt. Kanker (C.G.).

----Appellant

Versus

State of Chhattisgarh through District Magistrate, Kanker, Distt. Kanker (C.G.).

---- Respondent

For Appellant	:	Ms. Indira Tripathi, Advocate
For Respondent	:	Mr. Anand Verma, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board

03/09/2019

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 10/10/2012 passed in Sessions Trial No. 165/2011 by the Sessions Judge, North Bastar, Kanker, Distt. Kanker (C.G.) convicting the Appellant under Sections 376 and 342 of the Indian Penal Code and sentenced him to undergo RI for 10 years and to pay fine of Rs. 1000/- and RI for 6 months, respectively, with default stipulation. The sentences were directed to run separately.
2. Facts of the case are that the age of the Prosecutrix was about 20 years at the relevant time. On 10/11/2011 at about 10:30 when the Prosecutrix was standing near Daya Pan Center, the Appellant came there and dragged her to his home. Thereafter, he committed forcible sexual intercourse with her. When the mother of the Prosecutrix called her then the Appellant fled away from there. The Prosecutrix came out of the house and narrated the incident to her mother and other witnesses.

Immediately after the incident, FIR has been lodged vide Ex.P.-1. On the basis of FIR, offence has been registered. The Prosecutrix has been medically examined by Dr. Smt. Preeti Singh (PW8). Her report is Ex.P-8. During course of investigation, clothes of the Prosecutrix were seized vide seizure memo Ex.P-6. Statement of witnesses under Section 161 of the Cr.P.C were recorded. After completion of investigation, a charge-sheet has been filed. Trial Court framed the charges. As many as 9 prosecution witnesses have been examined. One defence witness has been examined. Statement of the Appellant under Section 313 of the Cr.P.C was recorded wherein he has pleaded his innocence and false implication in the matter.

3. After trial, the trial Court has convicted and sentenced the Appellant as mentioned in paragraph one of this judgment. Hence, this appeal.
4. Learned Counsel appearing for the Appellant submits that he does not want to press this appeal on merits and confines his argument to the sentence part only. She further submits that out of total jail sentence of 10 years, the Appellant is in custody since 12/11/2011 and completed almost 8 years of jail sentence, he is facing the *lis* since 2011 and he has no criminal antecedent, therefore, he prays that the sentence awarded to the Appellant may be undergone.
5. Per contra, learned Counsel appearing for the State supported the impugned judgment and submits that the sentence awarded by the trial Court is just and proper and requires no interference.
6. I have heard learned Counsel appearing on behalf of the parties and

perused the record minutely.

7. Considering the above facts and circumstances, particularly that out of total jail sentence of 10 years, the Appellant is in jail since 12/11/2011 and there is no criminal antecedent of the Appellant, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentence awarded to him is reduced to the period already undergone by him
8. Consequently, the appeal is partly allowed. The conviction imposed upon the Appellant under the aforementioned Section is upheld, however, the jail sentence awarded to him is reduced to the period already undergone by him. The fine sentence is affirmed.
9. It is reported that the Appellant is in jail. He be released forthwith, if not required in any other case.
10. Records of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
Judge