

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1070 of 2017**

Naresh Bhuihar S/o Arjun Bhuihar, Aged about- 35 years
R/o Village Idarikala, Police Station Chando, District-
Balrampur Ramanujganj Chhattisgarh. ---- **Appellant**

Versus

State of Chhattisgarh Through Station House Officer
Chando, District Balrampur, Ramanujganj Chhattisgarh.

---- **Respondent**

For the appellant : Shri Sandeep Yadav, Advocate
For the Respondent/State: Mr. Aman Kesharwani, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****16.12.2019**

1. The appeal is preferred against judgment dated 28th April, 2016 passed by Additional Sessions Judge, Ramanujganj, District- Balrampur-Ramanujganj (CG) in Sessions Trial No.155/2011 wherein the said Court convicted the appellant for the commission of offence under Section 376(1) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay fine of Rs.3000/- with default stipulation.
2. In the present case, prosecutrix is PW-6. As per the prosecutrix on the date of incident i.e 16th August, 2010 the prosecutrix went to Chando market when she was on way to market the appellant caught her and dragged her towards forest, closed her mouth, make her lay down on the earth and thereafter committed sexual intercourse without her

consent and without her will. Matter was reported, appellant was charge-sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits that Trial Court overlooked the omission and contradictions of the statements of the prosecution witnesses and not evaluated the evidence properly therefore, finding of the trial Court is not liable to be sustained.
4. On the other hand, learned State counsel submits that finding of the trial Court is based on proper marshaling of the evidence and same is not liable to be interfered with invoking jurisdiction of appeal.
5. In the present case, the prosecutrix (PW-6) deposed before the trial Court that she was going to Chando market on the date of incident and in the midway the appellant caught hold her, dragged her towards forest, closed her mouth and lay down her on the earth thereafter committed sexual intercourse with her. Version of this witness is not rebutted during cross examination. It is further supported by FIR which is lodged on the next day of incident at Police Station Chando in which name of the appellant is mentioned as culprit and his act of rape also mentioned in the said FIR. The prosecutrix is remain constant to her version right from the date of incident and to her statement recorded before the trial Court. It is a quality of the evidence which has to be weighed while marshaling the entire evidence. From the

entire record. There is nothing to say that appellant has been falsely roped in the charge in question. The evidence adduced by the prosecution regarding commission of offence is unrebutted and version of the prosecutrix is of sterling quality. If version of the prosecutrix is inspiring confidence, no corroboration is necessary. In the present case her version is supported by FIR and other relevant material.

6. On an overall assessment, it cannot be said that appellant has been falsely roped on account to grudge or otherwise. Act of the appellant falls within mischief under Section 376(1) of IPC. Looking to the evidence, argument advanced on behalf of the appellant is not sustainable and conviction of the appellant under Section 376(1) of IPC is hereby affirmed.
7. Trial Court awarded 7 years sentence to the appellant which is the minimum sentence prescribed for the offence under Section 376(1) of IPC less than minimum can not be awarded. Considering the facts and circumstances of the case and further considering the act of the appellant. Sentence awarded to the appellant by the trial Court cannot be termed as harsh, disproportionate or unreasonable.
8. Accordingly, the appeal is liable to be and is hereby dismissed.

9. As per report of the jail authority the appellant has suffered full jail term, therefore, no further order for his arrest etc., is required.

Sd/-
(Ram Prasanna Sharma)
JUDGE

N.Mohle