

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 5-3-2019****Pronounced on 6-3-2019****CRIMINAL APPEAL 221/2008**

(Arising out of judgment of conviction and order of sentence dated 7-2-2008 passed by 3rd Addl. Sessions Judge, Ambikapur Sarguja (FTC) in Sessions trial No. 188/2007)

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Simon aged about 20 years son of Budhsai Kerketta, R/o. Village Dharampur, Hokadopara, P.S. Sitapur, Distt. Sarguja (CG)

---Appellant**-VERSUS-**

State of Chhattisgarh, through P.S. Sitapur, Distt. Sarguja (Ambikapur)

---Respondent

For appellant	: Ms. Nirupma Bajpai, Adv.
For respondent/State	: Mrs. M. Asha, Panel Lawyer.

Hon'ble Shri Sharad Kumar Gupta, Judge**C.A.V. JUDGMENT**

1. In this criminal appeal the challenge is levied to the judgment of conviction and order of sentence dated 7-2-2008 passed by 3rd Addl. Sessions Judge, Ambikapur Sarguja (FTC) in Sessions trial No. 188/2007 whereby and whereunder he convicted the appellant as under:-

Offence u/S.	RI for	Fine Rs.	in default of payment of fine
376(1), IPC	10 Years	1,000/-	Imprisonment for 2 months

2. In brief the prosecution story is that at the time of alleged incident prosecutrix was 16 years old. She was a resident of village Dharampur. On 19-4-2007 at about 11.30 pm at village Dharampur appellant had told prosecutrix that someone is calling her towards the lane. She went towards the lane. Appellant reached there following her, pressed her mouth, took her towards courtyard by pulling and committed forcible sexual intercourse with her. On 20-4-2007 she lodged an FIR in police station Sitapur. After completion of investigation, a charge sheet was filed against him. The trial Court framed the charge against him under Sections 376(1) of the Indian Penal Code (in brevity 'IPC'). After completion of trial, trial Court convicted and sentenced him as

aforesaid.

3. Being aggrieved the appellant has preferred this criminal appeal.

4. Counsel for the appellant argued that Trial Court has not appreciated the evidence in proper perspective. Thus, the conviction and sentence of the appellant are bad in eyes of law. Hence, appellant may be acquitted of the aforesaid charge.

5. Counsel for the State argued that the conviction and sentence of the appellant are based on clinching evidence. The conviction and sentence of the appellant do not call for any interference by this Court.

6. As per the alleged RFSL report Ex. P-19, sperm and semen were found on the underwear of the prosecutrix marked as article A, slides of prosecutrix marked as B-1 and B-2.

7. There is no such evidence on record on the strength of which it can be said that Ex. P-19 is not believable thus this Court believed on Ex. P-19.

8. P.W. 1 Prosecutrix says in para 1 of her statement given on oath that appellant had told that someone is calling her. She went on the road. He pressed her mouth, took her and committed forcible sexual intercourse with her.

9. P.W. 3 Chandani says in para 2 of her statement given on oath that prosecutrix had told her that appellant had committed forcible sexual intercourse with her.

10. P.W. 4 Gaurishankar says in para 1 of his statement given on oath that prosecutrix had told him that appellant had committed forcible sexual intercourse with her.

11. In alleged FIR Ex. P-1 it has been mentioned that appellant had committed forcible sexual intercourse with prosecutrix.

12. There is no such evidence on record on the strength of which it can be said that Ex. P-1 is concocted, afterthought lodged with the intention to falsely implicate the appellant.

13. There is no such evidence on record on the strength of which it can be said that aforesaid statements of P.W. 1 Prosecutrix, P.W. 3 Chandani, P.W. 4 Gaurishankar are not simple, not natural and not normal.

14. Looking to the aforesaid facts and circumstances, this Court finds

that prosecution has succeeded to prove the charge punishable under Section 376(1), IPC against the appellant.

15. Thus, this court finds that trial Court has not committed any illegality in convicting and sentencing the appellant as aforesaid. Hence, the appeal deserves to be dismissed. The appeal is accordingly dismissed. The conviction and sentence of the appellant under Section 376(1), IPC are hereby affirmed.

16. As per the report received from the office of Jail Superintendent, Central Jail, Ambikapur dated 11-12-2018, the appellant has been released on 24-11-2014 after getting the benefit of remission extended to him. Thus, no further order is required.

Sd/-
(Sharad Kumar Gupta)
Judge