

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1362 of 2015**

- Mukhtar Alam S/o Gaffur Musalman, Aged About 20 Years, R/o Village Rampur Choki Vijaynagar, P.S. Ramanujganj, District Balrampur Ramanujganj, Chhattisgarh., Chhattisgarh

---- Appellant**Versus**

- State of Chhattisgarh Through S.H.O., Ramanujganj, District Balrampur Ramanujganj, Chhattisgarh., Chhattisgarh

---- Respondent

For Appellant	: Shri C. Jayant K. Rao, Advocate.
For Respondent/State	: Shri Himanshu Kumar Sharma, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

20-03-2019

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 09-10-2015 passed in Session Trial No. R 26/2014 by the Additional Sessions Judge, Ramanujganj, C.G. convicting the appellant under Section 376 of the IPC and sentencing him with R.I. for 10 years and fine of Rs.5000/- with default stipulation.
2. The case of prosecution, in brief, is this, that the prosecutrix (PW-1) is working as Mitantin. On 15-11-2013 she had been to attend a meeting in Ramanujganj. When she was returning after the meeting and walking towards the village, she met with the appellant who was also walking in the same direction. After having some talks the appellant walked by the side of the prosecutrix (PW-1) and then by force took her to a nearby lonely place and forcibly had sexual

intercourse with the prosecutrix (PW-1) without her willingness and consent. While leaving the place the appellant also threatened the prosecutrix (PW-1) with dire consequences in case she narrates about the incident to anyone. The prosecutrix (PW-1) came back to her home and immediately informed about the incident to her husband Ajay Nagvanshi (PW-2) and her mother-in-law Binda Devi (PW-3). The FIR (Ex.-P/1) was lodged on 16-11-2013. The police investigated the case on the basis of this FIR. On completion of the investigation charge sheet was filed against the appellant.

3. The appellant was charged with offence under Section 376 of the IPC, to which he denied and prayed for trial.
4. The prosecution examined 7 witnesses. After completion of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C., in which he denied all the incriminating evidence against him, pleaded innocence and false implication. Two witnesses were examined in defence.
5. After completion of the trial, the impugned judgment has been passed wherein the appellant has been convicted and sentenced as aforementioned.
6. Learned counsel for the appellant submits that the appellant has been erroneously convicted by the trial Court without there being any reliable and trustworthy evidence against him. The prosecutrix (PW-1) is not a reliable witness and the rest of the witnesses, Ajay Nagvanshi (PW-2) and Binda Devi (PW-3) are hearsay witnesses. The date and time of the incident is 15-11-2013 at about 5:00 p.m., whereas, the FIR was lodged after sufficient delay on 16-11-2013 at

about 04:30 p.m. It has been admitted by Ajay Nagvanshi (PW-2) and Binda Devi (PW-3) in their cross-examination that before lodging report they have consulted about the lodging the FIR. Doctor Snehlata Tirki (PW-4) has not given any opinion regarding commission of offence of rape. Therefore it is suggestive that the prosecutrix was a consenting party. Hence, the appellant was entitled for acquittal. In the alternative, it is prayed that if this Court is not convinced to allow the appeal and acquit the appellant, then his sentence of imprisonment may be reduced to the period he has already undergone in jail.

7. Learned counsel for the State/respondent opposes the grounds raised in the appeal and the submission made in this regard and submits that the prosecutrix (PW-1) has made very clear statement against the appellant which has remained unrebutted in her cross-examination. Her statement has been corroborated by the statement given by Ajay Nagvanshi (PW-2) and Binda Devi (PW-3). The lodging of the FIR in this case can be said to be prompt, therefore, the prosecution has proved its case beyond reasonable doubt. Hence, the appeal may be dismissed.
8. Heard learned counsel for the parties and perused the record of the trial Court.
9. The prosecutrix (PW-1) has stated that on the date of incident when she was on her way home after attending a meeting in Ramanujganj and walking towards her village, the appellant met with her on the way and after having some initial talks, he caught hold of her hand

and dragged her to a nearby *nala* where he committed the offence of rape with her without her consent and willingness. She has also stated that when she came back to her home, she immediately informed about this incident to her husband and mother-in-law and thereafter the FIR (Ex.-P/1) was lodged in the next day. In her cross-examination her statement has remained unrebutted and there is no other statement made by her so as to hold that she has contradicted the statement given by her in her examination-in-chief.

10. Ajay Nagvanshi (PW-2), husband of the prosecutrix, has stated that when his wife came back from Ramanujganj, the prosecutrix (PW-1) had informed him about the incident that had taken place giving every details. His statement has remained unrebutted in his cross-examination.
11. Binda Devi (PW-3) is mother-in-law of the prosecutrix (PW-1), she has also stated similar, that the prosecutrix (PW-1) informed her about the incident in detail. She has also remained firm in her cross-examination. Although a statement is made by this witness that they consulted and took advise before lodging of the FIR, but this admission itself does not falsify the statement given by the prosecutrix (PW-1).
12. Doctor Snehlata Tirki (PW-4) has examined the prosecutrix (PW-1) and opined that the prosecutrix was habitual to sexual intercourse and she did not find any injury on the body of the prosecutrix. But, under the provision of Section 114A of the Evidence Act, when the prosecutrix makes a statement that she has not consented for the

physical relation with the accused that shall be presumed to be a correct statement.

13. Lallu Nagvanshi (PW-5) has stated that in the night of the incident he was informed about the incident. In rest of the matter he has not supported the prosecution case.
14. Sub-Inspector T.R. Bhagat (PW-7) has given statement about the investigating procedures, which is not in any dispute.
15. Defence witness Ramesh Kumar (DW-1) has stated that there is dispute between Ajay Nagvanshi (PW-2) and the brothers of the appellant regarding their agricultural field and some complaints were also lodged by father of the appellant against Ajay Nagvanshi (PW-2). Similar statement has been given by Ramlal Singh (DW-2). Nowhere these witnesses have made any statement that because of this dispute the prosecutrix (PW-1) has falsely implicated the appellant. Therefore, this defence evidence is without any substance and has no effect on the evidence of the prosecution witnesses.
16. After closely scrutinizing all the evidence present in the record, I am of this opinion that the trial Court has not committed any error in coming to the conclusion against the appellant and recording conviction against him. Therefore, there is no need of interference in the conviction part of the impugned judgment.
17. Considered on the prayer made on behalf of the appellant for reduction of the jail sentence. Taking into consideration all the facts and circumstances of this case, I feel inclined to allow this prayer.

18. On the basis of discussion made hereinabove and the finding arrived at, this appeal is allowed in part. Conviction of the appellant under Section 376 of the IPC is maintained. However, the jail sentence awarded to the appellant, i.e., R.I. for 10 years, is reduced to R.I. for 7 years. The fine sentence is also maintained with default stipulation as imposed by the trial Court.

Sd/-

(Rajendra Chandra Singh Samant)
Judge