

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No. 1018 of 2014**

Mukesh Dhruv S/o Lalaram Dhruv, aged about 21 years R/o Village Belora,  
Police Station Magarlod, Civil and Revenue District Dhamtari (C.G.)

**---- Appellant****Versus**

State of Chhattisgarh, Through Station House Officer, Police Station Magarlod,  
District Dhamtari (C.G.).

**---- Respondent**


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|----------------|---|------------------------------------------|
| For Appellant  | : | Mr. Aditya Kumar, Advocate               |
| For Respondent | : | Mr. H.S. Ahluwalia, Dy. Advocate General |

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Hon'ble Shri Justice Arvind Singh Chandel

**Judgment on Board****26/03/2021**

1. This appeal has been preferred under Section 374 (2) of Cr.P.C against the judgment dated 27/09/2014 passed in Sessions Trial No. 35/2013 by the Additional Sessions Judge (FTC), Dhamtari whereby the Appellant has been convicted under Section 363 of the IPC and sentenced to undergo RI for 3 years with fine of Rs. 1000/-, with default stipulation.
2. Facts of the case are that the Prosecutrix (PW1) was aged about 17 years 9 months at the time of the incident. Father of the Prosecutrix namely Rajendra Singh Thakur had made a written complaint on 20/06/2013 alleging therein that on 19/06/2013 at about 2:00 pm, co-accused Shivendra came on motor-cycle along with the appellant and forcibly took the Prosecutrix on the motor-cycle and went away. At the

time of incident, his wife Rajeshwari, some children along with Padma and Seema were present. They all tried to stop the accused persons, but they fled away. On 26/06/2013, the Prosecutrix was recovered from the possession of co-accused Shivendra. Her statement was recorded. Thereafter, offence has been registered. After completion of investigation, a charge-sheet under Sections 376, 366 (3), 323 & 506 Part-II of the IPC and Section 4 of the POCSO was filed. Trial Court framed the charges.

3. After trial, the trial Court convicted co-accused Shivendra Singh for the offence punishable under Sections 363, 366, 506 Part-II and 323 of the IPC and Section 4 of the POCSO. And, the appellant has been convicted and sentenced by the trial Court 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. He further submits that from the statement of the Prosecutrix it appears that she was the consenting party. There was love relationship between the Prosecutrix and co-accused Shivendra, therefore, they fled together. Being a friend of Shivendra, the appellant had only assisted him and later on left Shivendra in middle. Shivendra took the Prosecutrix in train and thereafter the alleged act of rape was committed. He further submits that the appellant has already undergone about 3 months, he has no criminal antecedent and he is facing the *lis* since 2013, therefore, the sentence awarded to him may be reduced to the period already undergone by him.

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 of the case, particularly considering that out of total jail sentence of 3 years, the Appellant has undergone 3 months, he is facing the *lis* since 2013 and there is no criminal antecedent against them, I am of the view that the ends of justice would be met if, while upholding the conviction imposed upon the Appellant, the jail sentenced awarded to him is reduced to the period already undergone by him.
8. Consequently, the appeal is partly allowed. The conviction of the Appellant under the aforementioned sections is affirmed and he is sentenced to the period already undergone by him. The fine sentence is affirmed.
9. It is reported that the Appellant is on bail. His bail bonds is not discharges at this stage and the same shall remain operative for a further period of six months in light of Section 437-A of the IPC.
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**