

back, at Ranimal, Chari Chhack, the accused was alleged to have taken her to a dilapidated house and committed rape. The parents searched and rescued her. Father lodged written F.I.R. on 14.04.2015 at 7 P.M. which was registered as Bijepur P.S. Case No.59 of 2015.

3. In course of investigation, the victim was examined by the Doctor-P.W.14. After completion of investigation, charge-sheet was submitted. On commitment, the trial was taken up for the charge U/s.376 of the IPC.

The plea of the accused was denial simplicitor.

3-A. Prosecution examined 14 witnesses in all including the victim - P.W.11. Her parents are P.W.1 and P.W.12. P.Ws.3, 4, 5, 7 are witnesses to the seizure. P.W.6 is the scribe of the F.I.R. P.W.9 and P.W.14 are doctors. P.W.13 is the Investigating Officer. Spot map, Seizure list, Medical Examination Report and Chemical Examination Report are exhibited as Ext.1 to 14. The wearing apparels and some samples were marked as M.O. I to M.O. XI. No evidence is adduced on behalf of the defence.

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3-B. Learned Addl. Sessions Judge, Padampur appreciated the evidence on record and relying upon the testimony of the prosecutrix, convicted the accused U/s.376 of the IPC. While sentencing, learned trial court has imposed the minimum prescribed 7 years and fine (supra). In the judgment, learned trial court has recommended for payment of compensation to the victim U/s.357(A)(2) of the Cr.P.C.

4. Learned counsel for the appellant submits that the appellant is in jail custody since 15.04.2015 and now aged about 58 years. The appellant had a family having a son who is a daily labourer and for the poverty, he could not prefer the appeal.

4-A. He further submits that considering the age and the economic condition of the appellant, sentence may be reduced to the period already undergone.

4-B. Learned Addl. Govt. Advocate, Mr. Das does not dispute the economic condition of the appellant.

4-C. Contention of the learned counsel for the appellant for reduction of sentence on the ground of adequate and special reasons is not acceptable in view of amendment brought to the Section 375 by the Criminal Law (Amendment) Act, 2013 (13 of 2013) w.e.f 3.2.2013. Proviso for reduction of sentence for any adequate or special reasons is found to have been deleted from the Section.

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5. On careful perusal of the evidence of the prosecutrix P.W.11, I am of the considered view that the learned trial court has appreciated her testimony properly marking her demeanours in the Court. P.W.11 has stated that on the way, the accused dragged her to an abandoned house and committed forcible sexual intercourse on her. At that time, her father reached the spot in search of her. Seeing her

father, the accused pushed her father and ran away from the spot. The other evidence as recorded corroborates the testimony of P.W.11. No material is available to disbelieve the prosecution case.

5-A. Though the victim was stated to be mentally retarded, learned lower court has not framed the charge or convicted appellant for commission of rape of a woman suffering from mental or physical disability as provided U/s.376(2)(1) of the IPC.

5-C. State has also not come up with any appeal.

6. Under these circumstances, when the evidence on record unerringly establishes commission of rape by the accused, the conviction of the accused U/s.376 of the IPC cannot be interfered with. The minimum sentence, imprisonment of seven years having been awarded, the contention of the learned counsel for the appellant to reduce the same is not tenable. But regards being had to the socio-

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economic condition of the convict-appellant, the fine is reduced to Rs.1000/- as against Rs.5000/- awarded.

6-A. Consequently, the conviction of the appellant U/s.376 of the IPC is confirmed and the award of sentence to undergo rigorous imprisonment of 7 (seven) years is confirmed. But fine imposed Rs.5000/- is reduced to Rs.1000/-, in default to undergo one month rigorous imprisonment.

6-B. The conviction of the appellant U/s.376 of the IPC is

upheld and is sentenced to undergo rigorous imprisonment of 7 (seven) years and to pay a fine of Rs.1000/-, in default to undergo R.I. for one month. The period already undergone shall be set off against substantive sentence.

With this modification, the appeal is partly allowed.

LCR be returned immediately to the lower court.

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Dr. A.K. Mishra, J.

Orissa High Court, Cuttack. Dated the, 16th November, 2019/RRJena