

**(2018) 09 CHH CK 0152**

**Chhattisgarh High Court**

**Case No:** Criminal Appeal No. 18 Of 2010

Dharamjeet

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

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**Date of Decision:** Sept. 10, 2018

**Acts Referred:**

- Code Of Criminal Procedure, 1973 - Section 161, 374(2), 437A
- Indian Penal Code, 1860 - Section 366, 506

**Hon'ble Judges:** Ram Prasanna Sharma, J

**Bench:** Single Bench

**Advocate:** Parag Kotecha, S.K, Mishra

**Final Decision:** Allowed

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### **Judgement**

Ram Prasanna Sharma, J

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against the judgment dated 30.11.2009, passed by the

Additional Sessions Judge(FTC) Manendragarh, District Koriya (CG) in Sessions Trial No. 50/2009, whereby the appellant has been convicted under

Sections 366 and 506 Part II of the Indian Penal Code, 1860 (for short the I.P.C.) and sentenced to undergo R.I. for 3 years and fine of Rs.1000/-;

and R.I. for 1 year and fine of Rs.500/- with default stipulations. Both the sentences were directed to run concurrently.

2. As per the prosecution case, the prosecutrix was compelled to go with the appellant on a motorcycle on 20.4.2009 from village Piperbahra to

Painari. The further case of prosecution is that the appellant threatened the prosecutrix to kill her. The matter was investigated and the appellant was

charge-sheeted. After hearing both the parties, the trial Court has convicted and sentenced the appellant as aforementioned.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellant submits that the appellant has been falsely implicated in the case. He submits that conduct of the prosecutrix

shows that she was a consenting party, therefore, no case is made out against the appellant.

5. On the other hand, learned counsel for the State supporting the judgment submits that the finding recorded by the trial Court is based on proper

marshalling of evidence and same is not liable to be interfered with.

6. To substantiate the charge prosecution has examined as many as 8 witnesses.

7. The prosecutrix is the star witness of prosecution as other witnesses are either hearsay witnesses or who have assisted during investigation after

registration of the first information report. As per prosecutrix (PW1), the appellant came from behind while she had gone behind the house to ease

herself. She stated that the incident took place behind her house, but she deposed (para7) that she did not raise any alarm while the appellant was

compelling her to go with him. When the prosecutrix was just behind her house, she had every opportunity to alarm the people of the locality. It is not

the case that she alarmed during the incident and people of the locality did not reach there to rescue her, therefore, looking to the entire version of the

prosecutrix, it can be presumed that it may be a case of consent in accompanying the appellant.

8. As per the prosecutrix, the appellant took her on a motorcycle, but the statement made by the prosecutrix is not appears to be natural. The appellant

was alone at the time of incident and it was not possible for him to operate motorcycle by one hand and overpower the prosecutrix by another hand.

As per the version of the prosecutrix, she was taken to some other village namely- Painari and looking to her entire evidence, it cannot be held that the

appellant can take the prosecutrix in a manner deposed by her.

9. Looking to the entire evidence adduced on behalf of the prosecution, it cannot be held that she was compelled to accompany the appellant,

therefore, offence under Section 366 I.P.C. is not established.

10. So far as offence under Section 506 Part II of the I.P.C. is concerned, the prosecutrix deposed that the appellant threatened her that if she will make noise, he will kill her by knife. This version of the prosecutrix is contradictory to her earlier version recorded during investigation under Section 161 Cr.P.C. by the Investigating Officer. In her earlier statement she did not narrate anything regarding the knife, therefore, the story put forth and exaggeration made by her during examination before the Court is not acceptable in absence of any explanation for not stating the same during investigation.

11. For commission of offence under Section 506 Part II of the I.P.C., merely uttering words are not sufficient to constitute the offence. It is the determination to execute threat, constitutes the offence. Mere words are only fury which has no substance, therefore, from the evidence of the prosecutrix charge under Section 506 Part II of the I.P.C. is also not established and the finding arrived at by the trial Court is not sustainable.

12. Accordingly, the appeal is allowed. The conviction and sentence awarded to the appellant under Sections 366 and 506 Part II of the I.P.C are hereby set aside. The appellant is acquitted of the charges framed against him. It is stated that the appellant is on bail. His bail bond shall continue for a period of 6 months in view of Section 437-A Cr.P.C.