

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 714 of 2010**

Daman Dhankar @ Nitendra Chalki, S/o Dev Singh Dhankar, Aged about 27 years, R/o village Killekodo, P.S. Daundi, District Durg, (Chhattisgarh).

---- Appellant**Versus**

State of Chhattisgarh, through PS Bhanupratappur, District Uttar Bastar, Kanker, Chhattisgarh.

---- Respondent

For Appellant	: Shri Vimal Tondey, Advocate.
For Respondent	: Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Deepak Gupta, Chief Justice
Judgment on Board

02/12/2016

1. This appeal by the convicted accused/Appellant is directed against the judgment dated 16.08.2010 delivered by the learned Sessions Judge, Kanker, District Uttar Bastar, Kanker, in Sessions Trial No. 118 of 2009 whereby he convicted the accused/Appellant for having committed an offence punishable under Section 376 and 506 IPC and sentenced him as under:

CONVICTION	SENTENCE
Under Section 376 IPC	Rigorous imprisonment for 10 years with fine of Rs. 1000/-. In default of payment of fine, 3 months further rigorous imprisonment.
Under Section 506 IPC	Rigorous imprisonment for 3 months with fine of Rs. 500/-. In default of payment of fine, 1 month further rigorous imprisonment.

2. The prosecution story, briefly stated is that the prosecutrix (PW-1) was a student of Class IX. On 26.08.2009, while the prosecutrix was waiting on the road going towards her school, the accused came and told her that he would drop her to the school on his motor-cycle. The prosecutrix boarded the motor-cycle of the accused and thereafter, the accused, instead of taking her to the school, took her

to the house of one Mithun (PW-3) and thereafter, he raped her. After the accused raped the prosecutrix, some boys of the village reached the place of occurrence. The prosecutrix told them that she has been raped. She was taken and handed over to her parents and on the same day in the evening, FIR (Exhibit P/1) was lodged. The prosecutrix was subjected to medical examination and after medical examination and carrying out other investigation, the police filed charge sheet under Section 173 CrPC against the accused and charged him of having committed rape upon the prosecutrix and also threatening her with dire consequences in case she discloses this fact to anyone. The accused denied the charges and prayed for trial. After trial, he has been held guilty and has been convicted and sentenced, as aforesaid. Hence, this appeal.

3. The defence of the accused is one of consent. The whole case set up is that the accused and the prosecutrix were known to each other. In fact, a suggestion has been made that they were in love with each other and therefore, it is submitted on behalf of the accused that since it is a case of consent and that the prosecutrix was more than 16 years of age at the time of occurrence, no offence is made out.

4. As far as the age of the prosecutrix is concerned, she herself has stated that her date of birth is 22.01.1991 and therefore, on the date of occurrence, she was more than 18 years of age. Therefore, if consent is proved, no offence is made out. The prosecutrix, in the Court firstly denied that she knew the accused but in an answer to one question, she admitted that earlier, she was in love with him. It appears to me that the prosecutrix is not telling the whole truth. She definitely knew the accused since before. Evidence shows that the prosecutrix willingly boarded the motor-cycle of the accused. If she did not know the accused, she would not have boarded his motor-cycle.

5. However, merely because a girl accompanies a boy does not give the boy a licence to have sexual relations with the girl without her consent. The case of the prosecutrix is that she was to go to the school on the motor-cycle with the

accused but instead of going to the school, the accused took her to the house of Mithun (PW-3), forcibly dragged her inside the house and there he committed sexual intercourse with her.

6. The law is well settled that in case of rape, conviction can be maintained even on the basis of sole testimony of the prosecutrix. However, there is an important caveat which is that the testimony of the prosecutrix must inspire confidence and the Court must be sure that the statement of the prosecutrix is reliable and that intrinsic reliance can be placed on the same. There is no need of any corroboration.

7. On a close examination of the evidence of the prosecutrix who appeared as PW-1 and the statements of Satish Kumar (PW-2) and Dinesh Kumar (PW-6), it is apparent that the boys in the village got suspicious and when they went into the house of Mithun (PW-3), these two witnesses and other boys found that the accused was lying on a cot only in an underwear and the prosecutrix was standing in one corner of the room and was crying. As soon as these people came inside, the prosecutrix told them that she had been raped by the accused. Even if the prosecutrix had gone with the accused willingly, it stands proved beyond doubt that she was not a consenting party to the sexual intercourse. She had objected to the same and therefore, I am clearly of the view that the learned trial Court was fully justified in convicting the accused under Section 376 IPC. However, no case under Section 506 IPC is made out because the prosecutrix has also not said anything in this regard.

8. In view of the above, the conviction and sentence of the accused-Appellant under Section 506 IPC is set aside. However, the conviction and sentence under Section 376 IPC is upheld.

9. The appeal stands disposed accordingly.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE