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17:37:20 +0530**HIGH COURT OF CHHATTISGARH AT BILASPUR****CRA No. 310 of 2008**

- Sultan Singh, Aged About 36 Years, S/o Bihanu Gond, R/o. Village Larkeni, P.S. Marwahi, District Bilaspur (C.G.).

... Appellant**versus**

- State Of Chhattisgarh, Through P.S. Marwahi, District Bilaspur (C.G.).

... Respondent

 For Appellant : Mr. Yogendra Chaturvedi, Advocate.

 For Respondent/State : Ms. Avelin Juneja Gambhir, P.L.

SB: Hon'ble Shri Justice Sanjay S. Agrawal**Order on Board****16/07/2026**

- 1) This appeal has been preferred by the appellant/accused under Section 374 of the Code of Criminal Procedure, 1973, questioning the legality and propriety of the judgment of conviction and order of sentence dated 12/03/2008 passed by the learned Upper Sessions Judge (Fast Track Court), Pendraroad, District Bilaspur (C.G.) in Sessions Trial No.01/2008, whereby, the appellant has been convicted and sentenced as under :

Conviction	Sentence
Under Section 376(1) of the Indian Penal Code, 1860	R.I. for 7 years and to pay fine of Rs.5,000/-, in default of payment of fine, to further undergo R.I. for 1 month.
Under Section 450 of the Indian Penal Code, 1860	R.I. for 7 years and to pay fine of Rs.1,000/-, in default of payment of fine, to further undergo R.I. for 1 month.
(Both the sentences were directed to run concurrently)	

- 2) From perusal of the record, it appears that the appellant has been charge-sheeted with regard to the offence punishable under Sections 376 and 450 of IPC on the allegation that 13 to 14 months prior to the lodging of the report (Ex.P-1), dated 18/06/2007 by the prosecutrix, who was 37 years old, wherein it was alleged that the appellant entered into her house while opening the door forcefully and committed sexual intercourse with her and, when she was about to lodge the report, she was, then, persuaded by him not to lodge the report as he would marry her and, because of the said assurance, she did not lodge the report earlier before the concerned Police Station, as after the commission of the alleged offence, he started living with her. Based upon the alleged allegation, an inquiry was made and, an FIR (Ex.P-6) was registered on 07/09/2007 against him for the offence punishable under Section 376 of IPC in connection with Crime No.125/2007 and, during the course of investigation, she was examined medically by Dr. Sheela Shah (PW-7) on 13/09/2007 and, after completion of the usual investigation, the charge sheet was submitted before the Court of Judicial Magistrate First Class at Pendraroad for the offence punishable

under Section 376 of IPC, who in turn, committed the matter to the concerned trial Court, where based upon the materials available on record, he was charged for the offence punishable under Sections 450 and 376 of IPC, which has been denied by him and claimed to be tried.

- 3) In order to bring home the guilt of the appellant, the prosecution has examined as many as 08 witnesses and exhibited 14 documents, while 01 witness and 05 documents were exhibited by the appellant in his defence.
- 4) The trial Court, after considering the evidence led by the prosecution, arrived at a conclusion that on the said fateful day, the appellant entered into her house while opening the door forcefully and committed sexual intercourse and, accordingly, he has been convicted and sentenced as mentioned herein-above and, being aggrieved, the instant appeal has been preferred.
- 5) Mr. Yogendra Chaturvedi, learned counsel appearing for the appellant submits that the finding recorded by the trial Court holding the appellant guilty for the commission of the alleged crime, is apparently contrary to the materials available on record, inasmuch as, the evidence led by the parties has not been scanned in its proper manner and, thereby erred in convicting him as such. While inviting attention towards the statement of the prosecutrix (PW-1) and her brothers (PW-3 and PW-4), submits that the alleged incident has taken place with her own consent and, therefore, the trial Court ought to have acquitted him from the commission of the alleged

crime.

- 6) On the other hand, Ms. Avelin Juneja Gambhir, learned counsel appearing for the respondent/ State has supported the impugned judgment of conviction and order of sentence as passed by the trial Court.
- 7) I have heard learned counsel appearing for the parties and perused the entire record carefully.
- 8) From perusal of the record, it appears that a report (Ex.P-1) was lodged by the prosecutrix on 18/06/2007 with regard to the incident occurred 13 to 14 months prior to it, alleging therein, that on the said fateful day at 12 O' clock in the night, when she was sleeping in her house alone, the appellant forcefully opened the door and committed sexual intercourse and because of his persuasion while alluring to marrying her, she did not lodge the report immediately thereafter.
- 9) Although, it was alleged by her that he entered into her room while opening the door forcefully, but from perusal of her statement, particularly at paragraph 11 would reveal the fact that the door of her house was, in fact, opened. Therefore, it cannot be said that the door was opened by him forcefully and, in fact, it appears that he entered into her house only with her consent, as he remained with her upto 01:30 AM even after the commission of sexual intercourse and had his meals with her before leaving her home.
- 10) Further of her testimony would reveal the fact that her marriage was

performed with one Hazarilal 7 to 8 years ago at village Beljheria and was not a divorcee and, it reveals further from her testimony that, the appellant was also a married man having two daughters and, they used to live like husband and wife, as revealed from the statement of her brother-in-law, namely, Bodhiram (PW-5). Pertinently, to be noted here further, as revealed from her testimony, that the appellant was living with her for over more than a year and, it reveals further that she would not have lodged the report, if he would not have left her.

- 11) Birbal (PW-3) is her brother and, according to him, the appellant used to come to her house and used to sit beside her even in his absence at the home and, was not aware why she lodged the report and, similar is the statement of her another brother, namely, Phulchand (PW-4).
- 12) In view of the aforesaid testimony of the prosecutrix (PW-1) and her close relatives, it is, thus, evident that despite being a married woman, she had lived with the appellant, a married man having two children, for a considerable period of more than a year, like husband and wife and, who used to visit her house frequently without any obstruction being raised either from her, or from her relatives and, the door of her house was opened when he entered into her house on the said fateful day. Her conduct would, thus, lead to an irresistible conclusion that her alleged relation with him was consensual in nature and, it cannot be said that she was exploited sexually by him forcefully on the said fateful day, as alleged by her in

a written complaint (Ex.P-1) lodged 13 to 14 months, after to its occurrence.

- 13) Consequently, the appeal is allowed and the impugned judgment of conviction and order of sentence dated 12/03/2008 passed by the learned Upper Sessions Judge (Fast Track Court), Pendraroad, District Bilaspur (C.G.) in Sessions Trial No.01/2008 is hereby set-aside. The appellant is acquitted from the charges framed against him. His bail bond shall remain in force for a period of 6 months in view of the provisions prescribed under section 437-A of the Cr.P.C.

**-Sd/-
(Sanjay S. Agrawal)
Judge**