

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1163 of 2015**

State of Chhattisgarh Through District Magistrate Surajpur, Chhattisgarh

---- Appellant**Versus**

Hemchand Rajwade S/o Shri Ramkhilawan Rajwade, aged about 26 years, R/o Dumariya P.S. Surajpur, District Surajpur Chhattisgarh.

---- Respondent

For Appellant/State	:	Smt. Smita Ghai, Panel Lawyer.
For Respondent	:	Shri Atanu Ghosh, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Judgment on Board****Per Navin Sinha, Chief Justice****16/11/2015**

1. I.A. No. 1 of 2015 has been filed to condone delay of 20 days in filing the appeal for enhancement of sentence under Section 377 of the Code of Criminal Procedure, 1973. Having heard the parties and the duration of delay, it is condoned.

2. The Respondent was charged under Section 450 and 376 IPC for having committed offence on the prosecutrix (PW-1) inside the latter's house. The conviction, after consideration of the evidence is under Sections 450 and 376/511 IPC sentencing him to one year rigorous imprisonment with fine of Rs. 100/- under the former provision and to five years rigorous imprisonment with fine of Rs. 100/- under the latter provision, failing which he was required to undergo 7 days imprisonment under each count.

3. Learned Counsel for the State submits that the Learned Trial Judge has held that the evidence led by the prosecution sufficiently made out a charge under Sections 450 and 376/511 IPC. The maximum punishment under Section 376 IPC was life imprisonment. Therefore, under Section 376 read with Section 511 IPC,

the conviction ought to have been for at least 7 years as the maximum punishment that could be awarded under Section 376 IPC was life imprisonment. No other ground has been urged.

4. Learned Counsel for the Respondent submitted that the conviction was adequate in the nature of the occurrence as alleged, coupled with the evidence available. He submits that the occurrence itself was highly improbable based on the nature of evidence led by the prosecution. The Respondent has filed Criminal Appeal No. 726 of 2015 against the conviction.

5. We have heard Learned Counsel for the parties.

6. In view of Criminal Appeal No. 726 of 2015 having been filed by the Respondent, we do not consider it necessary to take notice of the facts and discuss beyond the extent necessary for the purpose of the present order so as not to prejudice either parties in Criminal Appeal No. 726 of 2015.

7. Suffice it to observe that the victim is a major. The occurrence has taken place inside her own house. Her family members were also present leading the Sessions Judge to hold that it was a case of attempt and not for commission of the offence.

8. Having considered the submissions and the nature of evidence as led on behalf of the prosecution discussed by the Sessions Judge, including the manner and place of occurrence, we find no reason to consider the prayer for enhancement of sentence.

9. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE