KISHORE KUMAR DESHMUKH
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CGHC010084892026 2026:CGHC:45422-DB

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Reserved on : 17.09.2026

Delivered on : 28.10.2026

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 58 of 2026

1 - Xyz

... Appellant(s)

versus

1 - State Of Chhattisgarh Through Station House Officer, Police Station Kotwali, Jagdalpur, District Bastar, Chhattisgarh.

2 - Himanshu Jha S/o Basant Lal Jha Aged About 67 Years R/o Vijay Ward No. 2, Kotwali Jagdalpur, District Bastar, Chhattisgarh.

... Respondent(s)

For Appellant : Mr. Ramsajiwan, Advocate

For State : Mr. Shailendra Sharma, Panel Lawyer

Hon'ble Shri Justice Narendra Kumar Vyas, Judge and
Hon'ble Shri Sudhir Kumar, Judge

C.A.V. JUDGMENT

***Per* Narendra Kumar Vyas,J.**

1. Heard on admission.

2. The acquittal appeal has been filed by the appellant/victim against the judgment passed by learned Additional Sessions

Judge, (F.T.C.), Bastar Place Jagdalpur (C.G.) dated 04.12.2025, in Sessions Case No. 31/2024, whereby the respondent No.2/accused has been acquitted of the charges punishable under Sections 376(2)(n), 323, 506(2) of the IPC.

3. The prosecution case, in brief, is that:-

A. On 01.05.2024, a written complaint (Ex.P/1) was filed by the victim before the Police Station – Kotwali, Jagdalpur, alleging therein, that she was married to Sachin Mahajan, a resident of Bhilai, from whom she has one son and one daughter. Owing to serious matrimonial discord, their marriage was dissolved by divorce in the year 2020. She was associated with Gujan Sangeet Group at Jagdalpur, where she met accused Himanshu Jha in June 2021. As they became acquainted, Himanshu Jha would occasionally talk to her over the mobile phone and told her that his wife had died about five years ago and after the death of his wife, he was feeling lonely. Knowing everything about her, Himanshu Jha proposed to marry her. She, in turn, asked him to speak to her mother and brother. Himanshu Jha assured her that he would speak to them and obtain their consent, and thereafter took her to a rented house belonging to Manoj Shukla at Dharampura No. 01, where he kept her. On 10.08.2021, Himanshu Jha came to the rented house stating that he would marry her, forcibly committed sexual intercourse with her against her will. Thereafter, on the repeated assurance and promise of marriage, he continued to establish sexual relations with her on several occasions up to 11.04.2024, thereby sexually exploiting

her. From April 2024 onwards, Himanshu Jha stopped communicating with her and did not answer her telephone calls. When she went to his house and met him, Himanshu Jha pointed towards a woman and stated that she was his wife and that he did not know the victim. It was then that she realised that Himanshu Jha had falsely represented that his wife had died and, by making a promise of marriage, had continuously subjected her to sexual exploitation and was now refusing to marry her. Prior to the aforesaid incident, the victim lodged a complaint against accused Himanshu Jha on 03.12.2023 at Police Station Kotwali, Jagdalpur, regarding the sexual exploitation committed upon her. When the police had commenced action on the said complaint, Himanshu Jha came to know about it and himself came to the police station. He assured her that she should not lodge the report, as he would marry her, would not deceive her and would keep her properly. Believing his assurances, she did not insist upon registration of the report. However, after a few days, he again deceived her in the same manner and continued to sexually exploit her. On 11.04.2024, when she asked Himanshu Jha to marry her, he refused and, against her will, established sexual intercourse with her, assaulted her and threatened to kill her.

B. On 12.04.2024, she went to school in the morning and, when she was leaving the school, Himanshu Jha called her at about 3:00 p.m. from mobile number on her mobile number and told her that he was going to undergo treatment for his diabetes.

Thereafter, he called her for one or two days and enquired about her well-being, but subsequently switched off his mobile phone and did not answer her calls. On the basis of the written complaint of the victim, First Information Report in Crime No. 198/2024 (Ex.P/1) was registered for an offence punishable under Section 376(2)(n) of the Indian Penal Code. After usual investigation, a charge-sheet against the accused for the offence punishable under Section 376(2)(n) of the Indian Penal Code was filed before the Court of the Chief Judicial Magistrate, Jagdalpur and on committal the case received by the Additional Sessions Judge, F.T.C. Charges were framed against accused Himanshu Jha for offences punishable under Sections 376(2)(n), 323 and 506 Part-II of the Indian Penal Code, 1860. The accused abjured charges and faced trial.

C. The prosecution examined as many as 11 witnesses to establish its case. The accused was examined under Section 313 of the Code of Criminal Procedure, 1973, wherein he claimed his innocence but did not lead any evidence in his defence.

4. On the basis of evidence and material on record, the learned trial Court has recorded its finding that the victim is a consenting party and by the impugned judgment learned trial Court acquitted the accused. Being aggrieved with this judgment, the victim has filed this acquittal appeal.

5. Learned counsel for the appellant would submit that the learned trial court has failed to appreciate the evidence available on

record and wrongly acquitted the accused. He would further submit that learned trial Court has erred in disbelieving the statement of the victim wherein she has categorically narrated the incident. He would further submit that the Trial Court failed to apply the presumption under Section 114-A of the Indian Evidence Act and wrongly inferred consent. The evidence on record clearly establishes that the accused had induced her into a relationship by representing that his wife had died and by repeated assurance her that he would marry her. The accused not only refused to marry her but also assaulted and threatened her.

6. He would further submit that the fact that the victim had earlier approached the police on 03.12.2023 but did not pursue the complaint, which cannot be treated as a circumstance adverse to her. The evidence discloses that the accused, upon coming to know the complaint, approached the victim and assured her that he would marry her and would not deceive her. Such conduct, viewed in the backdrop of the relationship between the parties, cannot be construed as consent. Learned counsel would therefore submit that the learned Trial Court has adopted an unduly technical approach while appreciating the testimony of the victim and has overlooked material circumstances emerging from the evidence. Thus findings recorded by the learned Trial Court are contrary to the evidence on record and would pray for admission of the appeal.

7. Learned counsel for the State, supporting the contention raised by the learned counsel for the appellant would submit that the present appeal may be admitted.

8. We have heard learned counsel for the parties and perused the record with utmost circumspection.

9. From appreciation of evidence of PW/1 the victim, it is quite vivid that the victim who is aged about 45 years and no divorce has been taken place between her and her husband but they are living separately. The victim has also admitted that she and the accused were living together for 2-3 years and he has informed about the family then only she has consented for living. She has also admitted that the accused is a retired Government Officer. She has further admitted that the accused reached to rented house in December, 2023 and they lived there upto March-April, 2024. Son of the victim (PW/2) stated that he along with his sister and mother is residing at Dharampura for 3-4 years and the accused is residing with them since 2021 upto 2023-24. The victim was examined by Dr. Kiran Chandekar (PW/04) who has given opinion that no sign of forcible sexual intercourse was found while examining the victim.

10. From the evidence of PW/2 son of the victim, it is quite vivid that the victim and the accused had lived together from August, 2021 to April, 2024. The victim has two children aged about 15 years and 9 years, therefore, in a house where the victim is

residing with her two children, forcible sexual intercourse has occurred for such a long period itself is doubtful. The victim has also admitted that in December, 2023 she had gone to the house of the accused, where, she came to know that the wife of the accused is alive, still on assurance of marriage she again started living with the accused till April, 2024. Further from the evidence of victim, it is quite vivid that she is a married woman and no decree of divorce has been obtained by her from her husband, though she is living separately with her husband. In such sisutation it cannot be held that on pretext of marriage the offence of rape has been committed by the accused. Hon'ble Supreme Court in case of **Jaspal Singh Kaural vs. the State of NCT of Delhi {2025 INSC 457}** has held as under :-

> 13. At the outset, we refer to the ratio in the case of Naim Ahmed Vs State (NCT) of Delhi1 whereby this Hon'ble Court had decided a similar matter, wherein allegedly, the prosecutrix had also given her consent for a sexual relationship with the accused/Appellant, upon an assurance to marry. The prosecutrix, who was herself a married woman having three children, had continued to have such relationship with the accused Appellant, at least for about five years till she gave the complaint. In the conspectus of such facts and circumstances, this Court had observed as under:-
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> "21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of the law and the case fell under Clause Secondly of Section 375IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceited the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise,

one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.

22. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as “rape” by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was mature and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 IPC.”

14. The decision in Naim Ahmed (supra) is squarely applicable to the conspectus of present case. It has been time and again settled by this Hon'ble Court, that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. An offence under Section 375 IPC could only be made out, if promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations.

11. Further considering the evidence of the victim and also considering that the appellant is aged lady, mother of two children and the accused was living with them in their house for about 2-3 years, at that time, no dispute was arisen between them and when the accused did not return to the house, she lodged the report alleging that when she insisted for marriage he has assaulted her and also threatened to kill her. The victim has also admitted in the evidence that when the first time accused had made relationship with her, it was not forceful. From the entire evidence of the victim, learned trial Court has rightly recorded a finding that the victim is a consenting party. This finding is neither perverse, nor illegal, in fact it is in accordance with the law laid down by the Hon'ble Supreme Court in case of **Kaini Rajan vs. State of Kerala {(2013) 9 SCC 113}** wherein Hon'ble Supreme Court has examined the consent of the victim in rape cases and held as under :-

"12. Section 375 IPC defines the expression "rape", which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any

person in whom she is interested in fear of death or of hurt. The expression “against her will” means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of. Section 90 IPC refers to the expression “consent”. Section 90, though, does not define “consent”, but describes what is not consent. “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances”.

12. Considering the aforesaid law and on appreciation of evidence we are of considered opinion that the victim is a consenting party and it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376 of the IPC, therefore learned trial Court is justified in acquitting the respondent No.2 of the charges levelled against him, which warrants no interference by this Court.

13. In view of the foregoing discussion, this Court finds no merit in the appeal. Accordingly, the appeal is dismissed at the admission stage itself.

Sd/- Sd/-

(Narendra Kumar Vyas) **(Sudhir Kumar)**

JUDGE **JUDGE**

Deshmukh