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**(2018) 08 CHH CK 0350**

**Chhattisgarh High Court**

**Case No:** Acquittal Appeal No. 387 Of 2010

State Of Chhattisgarh

APPELLANT

Vs

Bhupendra Soni

RESPONDENT

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**Date of Decision:** Aug. 29, 2018

**Acts Referred:**

- Indian Penal Code, 1860 - Section 376, 376(1)
- Code Of Criminal Procedure, 1973 - Section 313

**Hon'ble Judges:** Pritinker Diwaker, J; Rajani Dubey, J

**Bench:** Division Bench

**Advocate:** Adil Minhaj

**Final Decision:** Dismissed

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**Judgement**

Pritinker Diwaker, J

1. This appeal has been filed by the State against the judgment dated 29.09.2007 passed by Additional Sessions Judge, Balod DistrictÂ Â DurgÂ Â

inÂ Â SessionsÂ Â TrialÂ Â No.Â Â 32/2007Â Â acquittingÂ Â the accused/respondent of the charge under Section 376 (1) IPC.

2. Facts of the case in brief are that on 14.12.2006 un-numbered FIR (Ex.P-3) was lodged by the prosecutrix (PW-4) - a married lady aged about 20

years at the relevant time, at police station Supela, alleging that as her younger sister Dimpal Soni was married at Bhilai, she used to come there from

Jabalpur. It is alleged that three months prior to lodgment of this FIR when she had come to Bhilai to meet her sister, accused/respondent developed

intimacy with her, took her for a picnic and made physical relations with her on the assurance of marriage. It is further alleged that as the

respondent/accused had assured her of marriage, she did not lodge the report for about three months. The prosecutrix has further alleged that about

one and a half month prior to report being lodged, the respondent/accused had come to Jabalpur and there also he made physical relations with her.

Based on this report, offence under Section 376 IPC was registered against the accused/respondent. Initially, the report was lodged at Supela police

station but subsequently as the incident had taken place within the jurisdiction of police station Balod, the numbered FIR (Ex.P-2) was registered

thereat. After investigation, the challan was filed by the police under Section 376 IPC followed by framing of charge accordingly.

3. So as to hold the accused/respondent guilty, prosecution has examined 10 witnesses in support of its case. Statement of the accused/respondent has

also been recorded under Section 313 of the Code of Criminal Procedure in which he denied the allegations made against him and pleaded innocence

and false implication in the case. This apart, three defence witnesses have also been examined in this case.

4. Before trial, the prosecutrix has given an affidavit Ex. D-3 stating therein that on account of some misunderstanding the report was lodged by her;

that whatever relations were established between her and the accused, they were consensual; that the accused/respondent had not done anything with

her perforce; and that on being misguided by her relatives, she had foisted a false case on him.

5. After hearing the parties the Court below has acquitted the accused/respondent of the charge levelled against him and therefore, the State has

preferred this appeal against the judgment of acquittal.

6. Counsel for the appellant/State submits that the Court below has committed an error of law in acquitting the respondent/accused of the charge

levelled against him by ignoring the evidence adduced by the prosecution.

7. Heard counsel for the State/appellant and perused the material on record.

8. Prosecutrix (PW-3) has stated that when she had come to meet her sister at Bhilai from Jabalpur, accused/respondent met her and developed

friendship with her. Thereafter, they went to Nipani and Amapara where her close relatives resided. While staying at Amapara, she along with

accused/respondent went on a stroll near a canal where the accused removed her clothes and committed sexual intercourse with her on the assurance of marriage. After she went to Jabalpur, the accused/respondent also visited there and kept on telling of marrying her. When three months passed by and the accused did not marry her, she lodged the report.

9. Evidence on record including the affidavit filed by the prosecutrix (Ex.D-3) in the Court below clearly goes to show that the physical relations

between the accused and the prosecutrix - a married lady aged about 20 years, were consensual. Record also shows that the physical relations

between the two were established not only once but many a time, and when their marriage, as assured by the accused could not be performed, and

eventually when her husband deserted her on coming to know the relations between her and the accused, the report was lodged. All this factual

scenario makes this Court to hold that the prosecutrix was a consenting party to the act of the respondent and being so the Court below has been quite

justified in recording the finding of acquittal on the basis of evidence before it. There is no illegality in the judgment giving acquittal. Even otherwise, as

regards appeal against the finding of acquittal, it is a settled position of law that if on the basis of material on record two views can be drawn then the

preference has to be given to the one favouring the accused.

10. On viewing the evidence as above and being conscious to the settled legal position, this Court finds no substance in the appeal and accordingly the

same is dismissed. Judgment impugned is affirmed.