IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 3rd OF JULY, 2026

CRIMINAL APPEAL No. 6575 of 2025

RAM KAILASH GUPTA @ BABLU

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri S. M. Shukla - Advocate for the appellant.

Ms. Shikha Baghel - Panel Lawyer for respondent.

JUDGMENT

This appeal has been filed by the present appellant under Section 315 of the Bhartiya Nagrik Suraksha Sanhita, 2023 being aggrieved by the judgment of conviction and order of sentence dated 28.06.2025 passed by the First Sessions Judge, Sidhi, District Sidhi (M.P.) in Session Trial No.111 of 2020 whereby the present appellant/accused has been convicted under Section376(1) and 306 of the Indian Penal Code and sentenced to undergo 10-10 years RI and fine of Rs.1000/- for each offence with default stipulation.

2. The case of the prosecution, in brief, is that on ated 12/02/2020 the brother of deceased has lodged FIR in police station Majhuli, District Sidhi that on at about 10.00 a.m. dated 10/02/2020 his sister went to take vegetable to her Goats but she was not return therefore he searched but could not found her. On dated 12/02/2020 his wife and sister went in side of Arhariya field

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behind house of Shivprasad Gupta, deceased was found hanging. Therefore the police registered merg no. 01/2020. During the investigation the police has found that present appellant has committed rape with her with false promise marriage therefore she become pregnant but after pregnancy he denied for marriage therefore she committed suicide. FIR was registered bearing Crime No.291/2020. Accused was medically examined.

3. The learned trial Judge on going through the evidence available in the charge-sheet framed charges against appellant for the offence punishable under Sections 376 and 306 of the IPC, which he denied and claimed for the trial.

4. In order to bring home the charges, the prosecution examined as many as 16 witnesses, namely sister-in-law of deceased (PW 1), brother of deceased (PW 2), father of deceased (PW 3), mother of deceased (PW 4), Suryakant Gupta (PW 5), Gulab Singh (PW 6), cousin sister of deceased (PW 7), cousin brother of deceased (PW 8), paternal uncle of the deceased(PW 9), Chintamani Gupta (PW 10), Rajkumar Pathak (PW 11), Monika Pandey (PW 12), Dr. Rakesh Tiwari (PW 13), Praveen Singh (PW 14), Yogesh Mishra (PW 15) and Dr. Rupesh Verma (PW 15) and placed the documents Ex.P-1 to P-21, and Ex.D-1 to Ex. D-7 on record. In defence, the appellant did not choose to examine any witness.

5. The learned trial Judge after appreciating and marshalling the evidence vide impugned judgment has convicted the appellant under Section 376(1) and 306 of the IPC and passed the order of sentence as mentioned above. In

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this manner, the present appeal has been filed by the appellant.

6. Learned counsel appearing on behalf of the appellant submitted that there is no evidence on record to establish the offences under Sections 376(1) and 306 of the IPC against the appellant. Although the DNA report confirms that the fetus was fathered by the present appellant, the relationship between the deceased and the appellant was consensual. The parties were in a love relationship. Therefore, no offence under Section 376 of the IPC is made out. It was further submitted that, as per the statements of the prosecution witnesses, the appellant and the deceased intended to marry each other. However, according to PW-1 and PW-9, the appellant refused to marry the deceased unless his demand for a house fulfilled. This itself indicates that the relationship between the parties was consensual and not the result of rape. There is also no evidence on record to show that the appellant established physical relations with the deceased on the basis of a false promise of marriage. With regard to the offence under Section 306 of the IPC, learned counsel contended that there is no evidence to establish that the appellant instigated or abetted the deceased to commit suicide. While it is not disputed that the deceased committed suicide, there is no cogent or reliable evidence on record to prove that the appellant had instigated or abetted the commission of the said act. It was further argued that even if the testimonies of PW-1 and PW-9 regarding the appellant's demand for a house as a precondition for marriage are accepted, such conduct cannot, by itself, be construed as instigation or abetment to commit suicide. In this regard, the material witness is the father of the deceased (PW-3), who merely stated that

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the appellant had refused to keep the deceased as his wife. However, during cross-examination, PW-3 admitted that he was aware of the relationship between the appellant and the deceased and had never opposed it. He also did not support the version of PW-1 and PW-9 that the appellant had demanded a house as a precondition for marriage. It was also submitted that the statements of PW-1 and PW-9 regarding the alleged demand for a house constitute material omissions from their statements recorded by the police. These omissions were duly proved by the defence during their cross-examination. Therefore, the testimony of PW-1 and PW-9 on this aspect is not reliable. On the aforesaid grounds, learned counsel prayed that the impugned judgment of conviction and the order of sentence be set aside.

7. *Per contra,* learned counsel appearing for the State vehemently opposed the appeal and submitted that the DNA report conclusively establishes that the fetus was fathered by the present appellant. It was contended that the appellant established physical relations with the deceased on the false promise of marriage and, therefore, the offence under Section 376 of the IPC is clearly made out. With regard to the offence under Section 306 of the IPC, learned counsel submitted that, in view of the testimonies of PW-1, PW-3, and PW-9, the appellant's acts of instigation and abetment leading to the deceased's suicide stand duly established. It was, therefore, prayed that the present appeal, being devoid of merit, deserves to be dismissed and the impugned judgment of conviction and order of sentence be affirmed.

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8. Heard the learned counsel for the parties and perused the record.

9. The statement of Dr. Rakesh Tiwari (PW-13) reveals that on 12.2.2020 he was posted at Health Centre, Majholi as Medical Officer and he has conducted postmortem on the dead body of the deceased. He given the postmortem report which reads as under:

> "In my opinion cause of death is antemortem (suicide) hanging leads to asphyxia and cardio respiratory arrest and death and duration within 24-72 hrs approx before PM. Panchnama and pregnant uterus and Viscera and placenta are preserved and sealed, packed and delivered to PC for FSL and Pathological needful DNA profiling and also for execution and Nylon rope and cloth piece and also received."

10. Exhibit P/13 reveals that the cause of death was asphyxia and cardio respiratory arrest resulting from hanging. The medical opinion further records that the death was suicidal in nature. Although certain prosecution witnesses, including the brother of the deceased (PW-2) and the father of the deceased (PW-3), stated in their depositions that the accused had allegedly murdered the deceased and thereafter hanged her with the help of a rope, PW-3 also stated that either the deceased had committed suicide or the accused had murdered her. However, it is not the case of the prosecution that the deceased was murdered by the present appellant. The testimonies of the prosecution witnesses, namely, the sister-in-law of the deceased (PW-1), the brother of the deceased (PW-2), the father of the deceased (PW-3), the mother of the deceased (PW-4), Suryakanth (PW-5), the cousin brother of the deceased (PW-7), the uncle of the deceased (PW-9), Chintamani Gupta (PW-10), and Dr. Rakesh Tiwari (PW-13), read conjointly with the post-mortem report (Exhibit P/13), conclusively establish that the deceased died

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due to hanging and that the death was suicidal in nature.

11. As regards the commission of rape by the accused and the allegation that he instigated and abetted the prosecutrix to commit suicide, PW-1 deposed that on 29.01.2020, the deceased informed her that she had made a mistake and disclosed that she carries three months pregnancy arising out of the physical relationship with the accused. PW-1 further stated that the accused had purchased abortion tablets for ₹490 from Dr. Yagya Gyan and gave them to the deceased. However, the deceased did not consume the tablets as she believed that the accused would marry her. PW-1 further deposed that the deceased informed her that the accused had demanded the house allotted to her under the Government scheme. Since her parents refused to transfer the house to him, the accused declined to marry her, denied that she was carrying his child, and, according to PW-1, this led the deceased to commit suicide. Similar statements were made by the brother of the deceased (PW-2), the father of the deceased (PW-3), and the uncle of the deceased (PW-9). However, their testimonies suffer from material contradictions, omissions, and inconsistencies, as revealed in paragraphs 5, 6, and 7 of the cross-examination of PW-1. The material facts stated by PW-1 in paragraphs 1 and 2 of her examination-in-chief do not find place in her police statement (Exhibit D/1). She also admitted that she had no conversation with the deceased after 29.01.2020, whereas, according to the prosecution case, the deceased died by hanging sometime between 10.02.2020 and 12.02.2020. A similar situation arises with the testimony of PW-2, who materially improved and exaggerated his version by alleging, in paragraphs 6, 7, 10, and 11 of his deposition, that the accused had murdered

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the deceased. The facts deposed by him in paragraphs 4 and 5 of his examination-in-chief do not find mention in the FIR (Exhibit P/1), the inquest panchnama (Exhibit P/3), or his police statements (Exhibits D/3 and D/4). These material omissions clearly indicate that PW-2 has substantially embellished the prosecution story, thereby rendering his testimony unreliable. Furthermore, in paragraph 14 of his cross-examination, PW-2 admitted that no dispute had arisen regarding the relationship between the deceased and the accused prior to the incident.

12. PW-3 is the father of the deceased. There is also variation in his statement qua his police statement exhibit D/5 and D/6 which revealed from para 6 of his cross examination. Moreover, this witness has only stated that since the accused has denied to marry with the deceased therefore his daughter has either committed suicide or accused has committed murder of her. However, he categorically admitted that the deceased and the accused were in a love relationship and that he had been aware of it while his daughter was alive, yet he never raised any objection to their relationship. This witness did not depose about the incident narrated by PW-1 and PW-2 regarding the accused's alleged demand for the house allotted to the deceased as a condition precedent for solemnizing the marriage. He also did not state that the accused had denied the paternity of the child carried by the deceased. The mother of the deceased (PW-4) was also an important prosecution witness on this aspect, as the parents of the deceased would ordinarily be in the best position to explain the circumstances leading to the incident. However, surprisingly, PW-4 did not depose anything regarding the allegations against the accused. She merely stated that her daughter was

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found hanging near their agricultural field, at a place situated close to the house of the accused. She expressed complete ignorance regarding the circumstances of the incident.

13. Suriyakant (PW-5) has only stated that police has inquired him about the purchase of rope by the deceased from his shop. Gulab Singh (PW-6) is the scribe of FIR(Exhibit P/1). While Bharti (PW-7) is the witness of Safina form Ex. P/2 and Naksha Panchayatnama Ex. P/3.

14. It is pertinent to note that Exhibits P/2 and P/3 do not contain any allegation against the accused. Similarly, the Merg Intimation (Exhibit P/1), which was the first information recorded by the police, also does not contain any allegation against the accused. Rather, it merely records that the deceased had committed suicide and that PW-2 had no knowledge of the reason for the suicide. If PW-2 had prior knowledge of the relationship between the deceased and the accused, as claimed by him during his deposition, he would have disclosed the same to the police at the earliest opportunity, namely, at the time of lodging the Merg Intimation (Exhibit P/1), and also during the preparation of the Safina Form (Exhibit P/2) and the Naksha Panchayatnama (Exhibit P/3). However, none of these contemporaneous documents contains any reference to such facts. The testimony of the cousin brother of the deceased, Balagdas (PW-8), is also formal in nature. He is merely a witness to the preparation of Exhibits P/2 and P/3 and has not deposed anything incriminating against the accused.

15. The uncle of the deceased (PW-9) has also deposed in tune with the PW-1 and he stated that four days before the incident he has called the accused and his father and told them to get the marriage solemnize between

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the deceased and accused. But the accused has demanded four acre land and a *Pakka* house of four rooms.The statement of this witness in respect of demand is also varied from the statement of PW-1 and PW-2 who has stated that accused has demanded only the house obtained by the deceased under government scheme.

16. The statement of this witness (PW-9) is also suffered from various omissions and exaggerations which is revealed in para 3, 4 and 5 of his cross examination which is on material point and renders the testimony of this witness not worthy of credence. While the statement of PW-10 are also formal in nature who is the witness of Exhibit P/2 and P/ 3.

17. The investigating officer Monika (PW-12) though has explained the proceedings during investigation but she admitted that she has not inquired in respect of call detail of mobile number 7389567801 which was found on a white paper and seized from the deceased. Moreover, it is also not reflected that the tablets received from the dead body of the deceased have been examined further in order to find out as to whether the tablets are meant for what purpose and whether it might be used for abortion or not.

18. DNA report in this case is positive reflecting that the paternity of the fetus lies with the accused. But the evidence on record shows that there was consensual relationship between the deceased and accused. In case of ***Deepak Gulati vs State of Haryana*** reported in **(2013) 7 SCC 657** it is observed by Hon'ble Apex Court as under:-

> *"24. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the*

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victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance." Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

19. In case of **Uday Vs. State of Karnataka** reported in **(2003) 4 SCC 46,** the Hon'ble Apex Court has held as under:

"It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no strait jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

20. In case of **Pradeep Kumar Verma vs State of Bihar** - *[2007] 7 SCC 413*, the Hon'ble Apex Court has ordained which reads as under :-

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"*11.* '*26.* … "… We are of opinion that the expression 'under a misconception of fact' is broad enough to include all cases where the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the facts with reference to which the consent is given. In Section 3 of the Evidence Act Illustration (*d*) [states] that a person has a certain intention is treated as a fact. So, here the fact about which the second and third prosecution witnesses were made to entertain a misconception was the fact that the second accused intended to get the girl married. … 'thus … if the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such a person'. … Although in cases of contracts a consent obtained by coercion or fraud is only voidable by the party affected by it, the effect of Section 90 IPC is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence." (*N. Jaladu*, *In re case* [ILR (1913) 36 Mad 453] , ILR pp. 456-57)' (*Deelip Singh case* [*Deelip Singh* v. *State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253 : AIR 2005 SC 203] , SCC pp. 101-02, para 26)"

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a

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person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, *unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her*."

21. The law laid down in the aforesaid decisions clearly distinguishes between rape and consensual sexual intercourse on the basis of a promise to marry. The legal position emerging from the judgments of the Hon'ble Supreme Court is that where, from the very inception, the accused had no intention of marrying the prosecutrix and made a false promise only to deceive her into consenting to sexual intercourse, such consent is vitiated by misconception of fact, and the act would fall within the ambit of the offence of rape. Conversely, where the promise to marry was genuine at the inception but could not subsequently be fulfilled due to supervening circumstances, the offence of rape is not made out. In the present case, it is necessary to examine whether the evidence adduced by the prosecution establishes that the accused never intended to marry the deceased from the very inception and that the alleged consent was obtained by deception. As discussed herein above, the prosecution has failed to establish this essential ingredient. The

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testimony of the prosecution witnesses regarding the alleged demand made by the accused for transfer of the house as a precondition for marriage has not been found to be reliable. The statements of the prosecution witnesses, who are close relatives of the deceased, suffer from material contradictions, omissions, and inconsistencies and, therefore, do not inspire confidence. There is no cogent evidence on record to establish that, from the very beginning, the accused had no intention of marrying the deceased and had entered into the relationship solely to satisfy his lust. On the contrary, the evidence indicates that the parents and brother of the deceased were aware of the relationship between the deceased and the accused and had not raised any objection thereto, which reflects their acceptance of the relationship. It is a settled principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt. Mere suspicion, however grave, cannot take the place of proof. Where two views are reasonably possible on the evidence adduced, the view favourable to the accused must prevail. In the present case, there is no cogent, reliable, or convincing evidence to establish that the accused had a dishonest or fraudulent intention from the inception of the relationship. Consequently, the prosecution has failed to prove that the alleged sexual relationship falls within the ambit of the offence of rape.

22. The learned trial Court convicted the accused on the premise that he had subsequently demanded the house allotted to the deceased as a condition precedent for marrying her, and that such conduct indicated that he had no intention, from the very inception, to marry the deceased. However, this finding of the trial Court is not sustainable. Firstly, there is no cogent, reliable, or convincing evidence on record to substantiate the allegation that

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the accused made such a demand. Secondly, there is no evidence whatsoever to establish that, from the inception of the relationship, the accused never intended to marry the deceased. On the contrary, the evidence on record shows that the family members of the deceased were aware of the relationship between the deceased and the accused and had not raised any objection to it, which militates against the inference that the accused had entered into the relationship with a fraudulent or dishonest intention from the very beginning.

23. As far as the offence under Section 306 of the IPC is concerned, there is no cogent, reliable, or convincing evidence on record regarding the alleged refusal of the accused to marry the deceased, as discussed hereinabove. However, even assuming, for the sake of argument, that the accused subsequently refused to marry the deceased and demanded a house from her, such an act, by itself, cannot be construed as instigation or abetment to commit suicide. The legal position regarding the offence under Section 306 of the IPC is well settled and clearly established. Some of the relevant decisions are as follows:

(a) In case of ***Kunju Muhammed @ Khumani and others vs. State of Karela, (2003) 1 SCC 761***, Hon'ble Apex Court held as under:-

> "16. We are at pains to appreciate this reasoning of the High Court. This witness has not been treated hostile by the prosecution, and even then his evidence helps the defence. We think the benefit of such evidence should go to the accused and not to the prosecution. .....
> 17. In the case of S.S. Cheena vs. Vijay Kumar Mahajan and others, (2010) 12 SCC 707, the Hon'ble Apex Court has held as under:-

(b). The law laid down by Hon'ble Apex Court in case of ***S.S. Cheena vs. Vijay Kumar Mahajan and others, (2010) 12 SCC 707***, is also relevant to

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refer here:-

> "28. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the Legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.
> 29. In the instant case, the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day to day life. Human sensitivity of each individual differs from the other. Different people behave differently in the same situation."

(c). In case of ***M. Mohan vs. State, AIR 2011 SC 1238,*** the Hon'ble Apex Court has held that :-

> "45. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.
>
> 46. The intention of the Legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under section 306 IPC, there has to be clear mens rea to commit the offence. It also requires an active act or direct act, which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

(d). Again, the ingredients under Sections 107 and 306 of the IPC was interpreted by the Hon'ble Supreme Court in the case of ***Prakash and Ors. vs. State of Maharashtra and Anr., 2024 SCC OnLine SC 3835,*** and the Hon'ble Apex Court has held as under:-

> "14. Section 306 read with Section 107 of IPC, has been interpreted, time and again, and its principles are well established. To attract the offence of abetment to suicide, it is important to establish proof of direct or indirect acts of instigation or incitement of suicide by the accused, which must be in close proximity to the commission of suicide by the deceased. Such instigation or incitement should reveal a clear mens rea to abet the commission of suicide and should put the victim in such a position that he/she would have no other option but to commit suicide.

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> 15. The law on abetment has been crystallised by a plethora of decisions of this Court. Abetment involves a mental process of instigating or intentionally aiding another person to do a particular thing. To bring a charge under Section 306 of the IPC, the act of abetment would require the positive act of instigating or intentionally aiding another person to commit suicide. Without such mens rea on the part of the accused person being apparent from the face of the record, a charge under the aforesaid Section cannot be sustained. Abetment also requires an active act, direct or indirect, on the part of the accused person which left the deceased with no other option but to commit suicide."

(e). This Court in the case of ***Mohsin son of Jafruddin Vs State of M.P., 2017 (11) Manisa 139 (M.P)***, while following the ratio laid down by the Hon'ble Apex Court has held as under:-

> *"12. In the case of Abdul Hanif Vs.State of M.P. 2002(11) MPWN 12, it has been reiterated that mere threatening or beating by the accused persons to the deceased does not constitute any instigation "for commission of suicide""*

24. On the anvil of the aforesaid discussion and keeping in view the law laid down in the judgments referred to hereinabove, it can be safely concluded that the finding recorded by the learned trial Court regarding the guilt of the accused for the offences under Sections 376(1) and 306 of the IPC is erroneous, perverse, and unsustainable in law. The present case is a fit case for acquittal, as the prosecution has failed to prove its case beyond reasonable doubt. Testing the prosecution case on the touchstone of the settled principles of criminal jurisprudence, the present appellant is entitled to be acquitted of the aforesaid offences.

25. *Ex consequenti*, this appeal succeeds and is hereby **allowed.** The impugned judgment of conviction and order of sentence dated 28.6.2025 passed by the learned First Sessions Judge, Sidhi, District Sidhi in Sessions Trial No.111 of 2020 is hereby set aside and the appellant is acquitted from

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the charges punishable under Sections 376(1) and 306 of IPC.

26. Appellant is in jail. He be set at liberty forthwith if not required in any other case. The fine amount if any deposited by the appellant be refunded back to him.

27. The order of the Trial Court pertaining to disposal of the property is hereby affirmed.

28. Let record of the Trial Court along with copy of this order be sent to the concerned Trial Court for information and necessary compliance.

(RAJENDRA KUMAR VANI)
JUDGE

mrs. mishra

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