

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLA No. 736 of 2025**

(In the matter of an appeal under Section 374(2) of the Code of Criminal Procedure, 1973).

<i>Ajit Kishan</i>		<i>Appellant (s)</i>
<i>-versus-</i>		
<i>State of Odisha</i>		<i>Respondent (s)</i>

Advocates appeared in this case through Hybrid Arrangement Mode:

For Appellant (s) : *Ms. A. Ray, Adv.*

For Respondent(s) : *Mr. Udit Ranjan Jena, AGA*

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING: -27.01.2026

DATE OF JUDGMENT: -13.02.2026

Dr. Sanjeeb K Panigrahi, J.

1. The appellant assails the judgment of conviction and order of sentence dated 22.05.2025 passed by the learned Ad Hoc Additional District and Sessions Judge (FTSC), Sambalpur in S.T. No.113 of 2021, whereby he was convicted under Section 450 of the Indian Penal Code, 1860 and sentenced to undergo rigorous imprisonment for five years with a fine of Rs.15,000/-, in default whereof to undergo rigorous imprisonment for a further period of three months, with a direction to set off the period of detention already undergone under Section 428 of the Code of Criminal Procedure, 1973.



I. FACTUAL MATRIX:

2. The prosecution case, in brief, is that on 08.08.2021, the informant lodged a written report before Katarbaga Police Station alleging that on 07.08.2021 at about 11.00 PM, the accused trespassed into his house during his absence and committed rape upon his wife.
3. On receipt of such information, the accused was apprehended. On the basis of the said written report, Katarbaga P.S. Case No.147 of 2021 was registered.
4. Upon appreciation of the materials available on record, the learned Trial Court, by judgment dated 22.05.2025 passed in Sessions Trial Case No.113 of 2021, found the appellant guilty and convicted him under Section 450 of the Indian Penal Code, 1860 and sentenced him accordingly.
5. Aggrieved by the said judgment of conviction and order of sentence, the appellant has preferred the present appeal.

II. SUBMISSIONS OF THE APPELLANT:

6. Learned counsel for the appellant earnestly made the following submissions in support of his contentions:
 - i. The appellant submitted that the judgment of conviction is illegal and arbitrary, contrary to the settled principles of law laid down by different High Courts and the Supreme Court.
 - ii. The appellant submitted that the impugned judgment is against the weight of evidence and materials available on record. It was further contended that the impugned judgment suffers from



inherent inconsistencies and is not based on sound reasons or proper appreciation of the probative value of the evidence.

- iii. The appellant contended that the learned Trial Court failed to appreciate that the evidence adduced by the prosecution witnesses was inconsistent, improbable and discrepant in material particulars, thereby affecting their credibility, and therefore the appellant ought not to have been held guilty of the charge.
- iv. The appellant submitted that the learned Trial Court accepted evidence inadmissible in law and discarded evidence admissible in law, which has resulted in miscarriage of justice, and therefore the judgment of conviction is liable to be set aside.
- v. The appellant contended that most of the so-called material witnesses are family members of the victim and, being interested witnesses, deposed against the appellant to secure success of the prosecution case, and therefore the learned Trial Court ought to have recorded a judgment of acquittal.
- vi. The appellant contended that in the absence of clear, cogent and direct evidence against him, the learned Trial Court ought to have held that he was not guilty of the alleged offences and should have recorded an order of acquittal. It was further submitted that the prosecution failed to establish the charge under Section 450 of the Indian Penal Code, 1860 by cogent evidence and, therefore, the conviction under the said provision is unsustainable.



- vii.** The appellant contended that the alleged occurrence took place on 07.08.2021 at about 11.00 PM, whereas the FIR was lodged on 08.08.2021 at about 8.50 PM, and the delay in lodging the FIR has not been satisfactorily explained by the informant. It was submitted that such unexplained delay renders the prosecution case doubtful, an afterthought and manipulated, and therefore the appellant is entitled to acquittal.
- viii.** The appellant contended that P.W.1, the informant, was not present in his house at the time of the alleged occurrence on the night of 07.08.2021. During cross-examination, he admitted that he had not mentioned in the FIR that his wife had informed him that the accused had forcibly raped her, nor had he stated that after receiving such information he returned home and found the accused present there. He further admitted that he had not stated in the FIR as to who had informed him about the incident. It was submitted that these omissions are material in nature and affect the credibility of the prosecution case. The defence has questioned the manner in which the accused was allegedly detained at the spot and the sequence of events leading to the lodging of the FIR. It was further contended that P.W.1 was working as a labourer in Satyam Metallic, whereas the accused was working as a Supervisor in Aditya Birla, where the victim was also employed under him, and such circumstances were not properly appreciated by the learned Trial Court.



- ix. The appellant contended that P.W.2, the victim, made material omissions and improvements in her evidence. During cross-examination, she admitted that she had not stated before the Magistrate that the accused had telephoned her expressing his intention to come to her house and that he forcibly committed rape upon her. She also admitted that she had not stated in her examination-in-chief that she had informed her husband about the incident. It was further submitted that in her earlier statement before the Magistrate under Section 164 Cr.P.C., she had stated that she liked the accused, both of them loved each other, and on the night of the occurrence the accused came to her house and mingled with her. The appellant contended that such statement indicates consensual intimacy rather than forcible sexual assault. It was therefore argued that, at best, the evidence suggests a consensual relationship and not a forcible act, and the learned Trial Court failed to properly appreciate this aspect.
- x. The appellant contended that P.W.5, the mother-in-law of the victim, admitted during cross-examination that she had not stated before the police that the accused had raped the victim and that such allegation was being made for the first time in Court. She further admitted that she did not know what had transpired inside the house, as she was sleeping on the other side at the relevant time. It was submitted that her evidence does not establish the alleged act and is limited to the assertion that when she woke up during the night, the accused had been detained



outside the house. According to the appellant, such evidence does not materially support the prosecution case regarding the alleged offence.

- xi.** The appellant contended that P.W.4 (Basanti Munda) and P.W.6 (Kalakanu Munda), who were cited as independent witnesses to corroborate the prosecution case, did not support the prosecution version. P.W.6 denied having knowledge about the incident and even denied knowing the accused, and though declared hostile and cross-examined by the prosecution, nothing incriminating could be elicited from him. It was further submitted that P.W.4 also did not support the prosecution case in material particulars. She stated that she had no personal knowledge of the alleged occurrence and had only heard about it from others. Though she stated that villagers had assembled near the house and that the accused had been detained there, she admitted that she had remained present only for a short period and could not state what had actually transpired. She was also declared hostile and denied having made any prior statement before the police. According to the appellant, the evidence of these so-called independent witnesses does not materially corroborate the prosecution case regarding the alleged offence.
- xii.** The appellant contended that P.W.3, the Medical Officer who examined the accused, found him conscious, well oriented and mentally normal, and detected no external injury on his body or on his private parts. Though the doctor opined that the accused



was capable of sexual intercourse, he did not find any signs or symptoms of recent intercourse. It was further submitted that during cross-examination, the doctor admitted that no smegma or spermatozoa were detected and that spermatozoa can ordinarily be found within 48 hours of sexual intercourse. The appellant pointed out that the medical examination of the accused was conducted on 09.08.2021 at about 11.50 A.M., approximately 36 hours after the alleged occurrence, and that the accused had changed his clothes and taken bath in the meantime. According to the appellant, the medical evidence does not support the allegation of forcible sexual assault.

- xiii.** The appellant contended that P.W.8, the Medical Officer who examined the victim on 09.08.2021, found no bodily injury on her person and noted that she was habituated to sexual intercourse. Though vaginal swab and pubic hair samples were collected and handed over to the police, no medical findings indicative of forcible sexual assault were recorded. It was further submitted that during cross-examination, the Medical Officer admitted that it was mentioned in the medical report that the victim was in a physical relationship with the accused for about three months and that there was no difficulty in their relationship. According to the appellant, this supports the case of the defence regarding consensual intimacy. The appellant further pointed out that the medical examination of the victim was conducted nearly two days after the alleged occurrence and that she had changed her



clothes and taken bath in the meantime, which, according to the defence, further weakens the prosecution case.

- xiv. The appellant contended that P.W.7, the Investigating Officer, had sent both the accused and the victim for medical examination and had seized their biological samples and worn clothes, which were subsequently forwarded for chemical examination. However, the Chemical Examination Report was not produced in evidence. It was further submitted that during cross-examination, the Investigating Officer admitted that there were no stains of blood, mud or any other incriminating marks on the seized clothes. According to the appellant, in the absence of any forensic report and in view of the absence of any incriminating material on the seized articles, the seizure of such materials does not advance the prosecution case. The appellant further pointed out that the Investigating Officer admitted that the doctor had recorded that the victim had been in a physical relationship with the accused for the preceding three months and that there was no difficulty in such relationship. According to the defence, this aspect further supports the case of consensual intimacy.
- xv. The appellant contended that there was no prior hostility or enmity between the accused and the witnesses, except that the victim, who is the wife of the informant, was allegedly having an intimate relationship with the accused. It was submitted that both of them were working in the same company and that the



victim was working under the accused, and in that course they developed a love affair and intended to live together. According to the appellant, the prosecution version is an attempt to give a criminal colour to what was essentially a consensual relationship. It was further contended that the evidence on record does not establish forcible sexual assault, and in the circumstances, the appellant is entitled to acquittal.

III. SUBMISSIONS OF THE RESPONDENT/STATE:

7. Per contra, learned counsel for the respondent/State made the following submissions in support of his contentions:

- i. It was submitted that the evidence of P.W.1 establishes that the accused entered the house of the informant during his absence and was apprehended at the spot. P.W.2, the prosecutrix, has consistently stated that the accused came to her house during night hours and committed sexual assault, and that she had denied his proposal to come to the house. P.W.4 has supported the prosecution to the extent that the accused was detained at the spot by villagers.
- ii. The learned counsel for the opposite party submitted that the learned Trial Court has rightly acquitted the accused of the charge under Section 376 of the Indian Penal Code but correctly convicted him under Section 450 of the Indian Penal Code. It was contended that even if the sexual relationship is assumed to be



consensual, the same does not absolve the accused of the offence of house trespass.

- iii. It was submitted that Section 450 of the Indian Penal Code is attracted when house trespass is committed with intent to commit an offence punishable with imprisonment for life, and the intent of the accused at the time of entry is determinative. The entry of the accused into the dwelling house of the informant during the night hours, in his absence, for the purpose of engaging in illicit sexual relations, clearly establishes such intent.
- iv. The learned counsel further submitted that consent of the prosecutrix, if any, does not confer a legal right upon the accused to enter the house of the informant. Mere admission of a prior relationship does not negate the offence of house trespass, particularly when the prosecutrix had denied inviting the accused to her house on the date of occurrence.
- v. It was contended that conviction can be sustained on the sole testimony of the prosecutrix when it is found to be reliable and trustworthy, and that habitual intimacy or past relationship does not by itself discredit her testimony. It was further contended that delay in lodging the FIR has been duly considered by the learned Trial Court and does not affect the prosecution case, especially when the accused was apprehended at the spot.



IV. FINDINGS OF THE AD HOC ADDITIONAL DISTRICT AND SESSIONS JUDGE (FTSC), SAMBALPUR:

8. The learned Trial Court framed charges against the accused under Sections 450 and 376(2)(i) of the Indian Penal Code on the allegation that he had trespassed into the house of the informant during his absence and committed rape upon his wife on the night of 07.08.2021.
9. Upon consideration of the evidence, the learned Trial Court held that there was no material to sustain the charge under Section 376(2)(i) IPC, as there was neither any allegation nor evidence that the victim was suffering from mental or physical disability. The Court further observed that the provision had undergone amendment and that, in the absence of requisite ingredients, the charge under Section 376(2)(i) IPC was misconceived. On appreciation of the evidence of the victim, the medical officers and the Investigating Officer, the learned Trial Court came to the conclusion that the sexual relationship between the accused and the victim was consensual in nature and not forcible. Accordingly, the accused was acquitted of the charge under Section 376 IPC.
10. However, with regard to the charge under Section 450 IPC, the learned Trial Court held that the accused had entered into the dwelling house of the informant during the night hours in order to have illicit sexual relations with the victim. The Court observed that even if the relationship was consensual, the accused had no legal right to enter the house of the informant during his absence for such purpose. The Trial Court further held that the delay in lodging the FIR



did not materially affect the prosecution case and that the accused had been detained at the spot on the night of occurrence.

11. On such findings, the learned Trial Court concluded that the prosecution had successfully established the offence under Section 450 IPC beyond reasonable doubt, though not the offence under Section 376 IPC. Consequently, the accused was acquitted of the charge under Section 376 IPC but convicted under Section 450 IPC and sentenced to undergo rigorous imprisonment for five years with fine.

V. COURT'S REASONING AND ANALYSIS:

12. Heard learned counsel for the parties at length and perused the material placed on record.
13. The principal question that arises for consideration in the present appeal is whether the conviction of the appellant under Section 450 of the Indian Penal Code, 1860 can be sustained in law, particularly when the learned Trial Court has acquitted the appellant of the charge under Section 376 IPC on a categorical finding that the sexual relationship between the appellant and the victim was consensual in nature.
14. Section 450 IPC contemplates house-trespass committed in order to commit an offence punishable with imprisonment for life. Therefore, the prosecution is required to establish, first, that there was house-trespass within the meaning of Section 441 IPC, and secondly, that such trespass was committed with the intention of committing an offence punishable with imprisonment for life. The relevant provision reads as follows:



"441. Criminal trespass. —

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass"."

15. Thus, the intention at the time of entry is the determinative factor. Mere entry into property is not sufficient. The entry must be accompanied by the requisite criminal intent as defined under Section 441 IPC and, in the case of Section 450 IPC, such intent must be to commit an offence punishable with imprisonment for life.
16. In the present case, the learned Trial Court has, upon appreciation of the evidence of the victim (P.W.2), the medical evidence of P.Ws.3 and 8, and the Investigating Officer (P.W.7), recorded a clear finding that the sexual relationship between the appellant and the victim was consensual in nature. The Trial Court observed that there was no evidence of physical violence, no resistance by the victim, no breaking open of the door, and that the victim had opened the door for the appellant. It was further noted that the parties were in a prior intimate relationship.
17. Once the charge of rape has not been sustained and the relationship has been held to be consensual in nature, the foundation for invoking Section 450 IPC must be independently examined. If the entry was not with the intention of committing rape or any other offence punishable



with imprisonment for life, the essential ingredient of Section 450 IPC cannot be said to have been established.

18. The learned Trial Court proceeded on the reasoning that the victim, being the wife of the informant, had no right to permit the appellant to enter the house during the absence of her husband, and that even if the relationship was consensual, such entry was illegal. However, criminal liability must be founded strictly upon statutory ingredients and not upon considerations of moral or social impropriety.
19. It is relevant to note that in *Joseph Shine v. Union of India*¹, the Supreme Court struck down Section 497 IPC and held that adultery, though it may constitute a ground for civil consequences in matrimonial law, cannot be treated as a criminal offence. The Court emphasized that consensual sexual relationships between adults fall within the ambit of personal autonomy and privacy protected under Article 21 of the Constitution.
20. In the present case, once the learned Trial Court has recorded a finding that the relationship between the appellant and the victim was consensual in nature, the mere fact that the victim was a married woman cannot render the entry ipso facto criminal so as to attract Section 450 IPC.
21. Further, the prosecution has not established that the appellant effected entry by force or intimidation. There is also no finding that the entry was made with intent to intimidate, insult or annoy the person in

¹ 2019 (3) SCC 39.



possession. On the contrary, the Trial Court itself records that the victim opened the door and that the parties were in a consensual relationship. In such circumstances, the foundational requirement of criminal trespass as defined under Section 441 IPC remains unestablished.

22. Learned counsel for the respondent-State placed reliance upon the decision of the Supreme Court in *State of Rajasthan v. Biram Lal*², wherein conviction under Sections 376 and 450 IPC was ultimately upheld and the finding of house-trespass was treated as a circumstance supporting the charge of rape.
23. In *Biram Lal (supra)*, the prosecution case disclosed that the accused entered the dwelling house of the prosecutrix during the night hours by lifting the door. He was armed with a knife, gagged and threatened her, and thereafter committed rape. The prosecutrix raised alarm immediately, and her testimony stood corroborated by her mother, brother and another witness who reached the spot upon hearing the alarm. The High Court had acquitted the accused under Section 376 IPC. However, the Supreme Court, upon reappreciation of the evidence, restored the conviction under Section 376 IPC, holding that the testimony of the prosecutrix was reliable and trustworthy. In that factual backdrop of forcible entry accompanied by threat and violence, the conviction under Section 450 IPC reinforced the inference that the entry was with intent to commit rape.

² 2005 (10) SCC 714.



24. The present case stands on a materially different footing. Here, the learned Trial Court has categorically held that the sexual relationship between the appellant and the victim was consensual and not forcible. There was no evidence of use of force, no breaking open of any door, no weapon, and no resistance recorded. Once the allegation of rape has been rejected on merits, the inference that the appellant entered the house with intent to commit an offence punishable with imprisonment for life cannot be sustained in the absence of independent evidence establishing such intent.
25. It is a settled principle of criminal jurisprudence that the prosecution must establish each ingredient of the offence beyond reasonable doubt. Where the evidence on record does not clearly establish the requisite criminal intent at the time of entry, the benefit must enure to the accused.
26. In view of the findings recorded by the learned Trial Court itself regarding the consensual nature of the relationship and the absence of force, this Court is of the considered opinion that the essential ingredients of Section 450 IPC have not been proved beyond reasonable doubt.
27. Accordingly, the conviction of the appellant under Section 450 of the Indian Penal Code, 1860 is unsustainable and is hereby set aside.

VI. CONCLUSION:

28. The present appeal is **allowed**. The judgment of conviction and order of sentence dated 22.05.2025 passed by the learned Ad Hoc Additional District and Sessions Judge (FTSC), Sambalpur in Sessions Trial Case



No.113 of 2021, so far as it relates to conviction under Section 450 IPC, is hereby set aside.

29. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 13th February, 2026/-