

(3)

Single Bench

COURT FEES EXEMPTED
BY NOTIFICATION NO. 9960/D-2670/XXI-
B/C.G./03 AS SPECIFIED IN SCHEDULE
I & II OF THE COURT FEES ACT 1870.

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CR. M. P. No. 526/2009.

ACQUITTAL APPEAL NO. _____/2009.

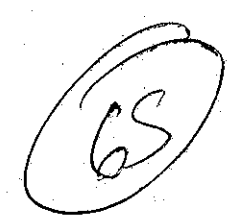
Appellant: State of Chhattisgarh, through the Police
Station, Newai, District Durg (CG).

Versus

Respondent:
Accused: Dewa @ Deosharan, S/o Chandrika Prasad
Dubey, aged about 22 years, R/o Shanker
Para, Station Maroda, Police Station, Newai
District Durg (CG).

APPLICATION FOR GRANT OF LEAVE TO APPEAL UNDER
SECTION 378 (3) AND MEMORANDUM OF APPEAL UNDER
SECTION 378 (1) OF THE CODE OF CRIMINAL PROCEDURE.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

SB : HON'BLE MR. JUSTICE PRITINKER DIWAKER

CR.M.P. NO. 526/2009

APPLICANT

State of Chhattisgarh

versus

NON-APPLICANT

Dewa @ Deosharan

Shri Praveen Das, Dy.G.A. for the State/applicant.

**APPLICATION FOR GRANT OF LEAVE TO APPEAL
UNDER SECTION 378(3)(1) OF THE CR.P.C.**

**ORDER
(26.02.2010)**

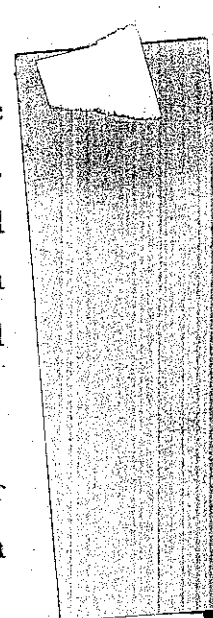
Heard on admission.

The present petition filed under Section 378(3) of the Cr.P.C. is directed against the impugned order and judgment dated 21.4.2009 passed by the Judicial Magistrate First Class, District Durg in Criminal Case NO. 517/2004 whereby acquitting the respondent/accused for the alleged offence under Sections 354 & 323 of the IPC.

2. As per the case of the prosecution on 22.4.2004, FIR Ex.P/1 was lodged by the prosecutrix P.W.-1 aged about 45 years stating therein that on the said date at about 8.00 a.m. the respondent came near her house, pressed her breast, outraged her modesty and had sought for sexual favour. She has further stated that when she had refused the same she was slapped by him.

3. So as to hold the accused/respondent guilty, the prosecution has examined as many as nine witnesses. Statement of the accused/respondent was also recorded under Section 313 of the Code of Criminal Procedure in which he denied the charges leveled against him and pleaded his innocence and false implication in the case.

4. Contention of Shri Das is that despite of the clear evidence available on record the Court below has erred in





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law in acquitting the accused/respondent. He submits that by giving perverse finding the Court below has acquitted the respondent.

5. I have heard counsel for the parties and perused the record.

6. Devki Bai (P.W.-1), complainant has though made allegation against the accused/respondent but it appears that there was some dispute between her and the accused because on the previous night of the incident also the accused had gone to her place and had knocked the door of her house but she states that she had not opened the door. She also states that during the scuffle her blouse was torn but the seizure witness of the said article namely Bhupendra Kumar (P.W.-2) & Nohar Nishad (P.W.-3) has not supported the prosecution case and have turned hostile. Further in the FIR it has been stated by the prosecutrix that Nohar Nishad (P.W.-3) had intervened in the dispute and had separated them but the said Nohar (P.W.-3) had not supported the prosecution case. In his court statement he has denied the statement as made by the prosecutrix.

6. The court below has elaborately considered the entire evidence as adduced by the prosecution while arriving to a particular conclusion of giving benefit of doubt to the accused/respondent while acquitting him. It is settled legal position that in a case against acquittal if two views are possible on the basis of the evidence led by the prosecution and the trial Court taking one view favoured the accused, reversion of the findings of acquittal by the appellate Court taking the other possible view into consideration is not permissible in law, this Court is of the view that the judgment impugned acquitting the respondent/accused of the offences under Sections 354 & 323 of the IPC is just and proper. I find no reason to interfere with the order impugned. In the result, the petition fails and is dismissed as such.

Sd/-
Pritinker Diwaker
Judge