

COURT FEES EXEMPTED
BY NOTIFICATION NO. 9960/D-2870/XXI-
B/C.G./05 AS SPECIFIED IN SCHEDULE
I & II OF THE COURT FEES ACT 1870

SINGLE BENCH

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
(C.G.)

CR.M.P. NO. 163/2014

ACQUITTAL APPEAL No. / 2014

APPELLANT/
APPLICANT

State of Chhattisgarh,
Through: Police Station - Kotwali,
Raigarh, District - Raigarh (C.G.)

VERSUS

RESPONDENT/
ACCUSED

Ghasiya @ Gopaldas,
S/o - Nathudas,
Aged about - 30 years,
R/o - Surveshwarinagar
Kotrroad, Thana - Kotwali,
District - Raigarh [CG]

Revenue Dist. Raigarh
P.S. Kotwali,
Crime No. **876/10.**

APPLICATION FOR GRANT OF LEAVE TO APPEAL UNDER
SECTION 378(3) OF THE CODE OF CRIMINAL PROCEDURE,
1973

R. No. 163/14

presented by Shri. Sushil Kumar Dubey

12/7/14

61

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.M.P. NO. 163 OF 2014

APPELLANT
APPLICANT

:

State of Chhattisgarh

VERSUS

RESPONDENT
ACCUSED

:

Ghasiya @ Gopaldas

APPLICATION FOR GRANT OF LEAVE TO APPEAL
UNDER SECTION 378(3) OF THE CODE OF
CRIMINAL PROCEDURE, 1973

Appearance:

Mr. Sudhir Bajpai, Govt. Advocate, for Appellant-State.

(Single Bench : Hon'ble Mr. P. Sam Koshy, J.)

ORAL ORDER
(20-02-2014)

(1) Heard on I.A. No.01/2014 which is an application for condonation of delay in filing of the instant petition which is barred by limitation of 37 days.

(2) On due consideration, since sufficient cause has been explained by the appellant-State in not filing the present petition within the stipulated time, I.A. No.01/2014 is allowed and the delay in filing of the petition is hereby condoned.

(3) Also heard on the application for grant of leave to appeal.

(4) By way of instant petition, the appellant-State has sought for a leave to appeal against the judgement dated 30.9.2013 passed by Judicial Magistrate Second Class, Raigarh, in Criminal Case No.35/2013.

(5) Brief facts of the case as per the prosecution story are that on 29.11.2010 at around 3.30 pm, the respondent-accused went to Saraswati Gyan Mandir School situated at Raigarh and entered the class room where the prosecutrix (PW-3) was checking the note-books of the students. After entering the class room with an intention to outrage the modesty of the prosecutrix (PW-3), the respondent had caught hold of the hand of the prosecutrix (PW-3) and slapped her and also abused her using filthy language.

62

Therefore, the prosecutrix (PW-3) had lodged a complaint with the police regarding the incident, on the basis of which the said criminal case was registered against the respondent-accused for having committed the offences punishable under Sections 294, 323, 354 of IPC.

(6) After conclusion of the trial, the Court below by impugned judgement dated 30.9.2013 reached to the conclusion that the version of the prosecutrix (PW-3) has not been supported by any independent witness and, therefore, her version appears to be doubtful.

(7) The reasoning given by the Court below is that the incident had happened in a class room while the prosecutrix (PW-3) was checking the note-books of the students and in spite of the victim being in the class room along with the students, the prosecution has not been able to produce any witness in respect of the version of the prosecutrix (PW-3) so as to substantiate the complaint filed by her (PW-3).

(8) The other reasoning which the Court below has given also is the fact that from the evidence that have come before the Court below, it is learnt that there was an enmity between the two families i.e. between the family of the victim (PW-3) and the family of the respondent-accused. Therefore, there is a possibility that because of the enmity, the victim might have implicated the respondent in the instant matter.

(9) Further, on perusal of the reasoning given by the Court below in para 11 of the impugned judgement, it is evident that in the statements made by PW-6 B.L. Prajapati, PW-1 Khagesh Tiwari and PW-5 Tarun Tiwari, all of them have submitted before the Court below that they had come to know about the incident on phone on being informed by the victim (PW-3). This also establishes the fact that there was no direct evidence to the incident which the prosecution has brought before the Court below.

63

(10) Taking all these facts and circumstances of the case into consideration, the Court below giving the benefit of doubt to the respondent-accused, has acquitted him from the offence punishable under Sections 294, 323, 354 of IPC.

(11) Pursuant to the aforesaid reasonings given by the Court below, I do not find any infirmity in the impugned judgement passed by the Court below nor can be the same is said to be without any basis.

(12) For the foregoing reasons, the instant petition is dismissed. Consequently, leave to appeal as prayed for is rejected.

Sd/-
P. Sam Koshy
Judge