

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 32 of 2011**

Smt. Anusuiya Srivas, aged about 37 years, W/o Shri Vijay Kumar Srivas, R/o Vill. & Post- Kondtarai, PS Bhupdeopur, District Raigarh (CG)

---- Appellant**Versus**

1. State of Chhattisgarh through the District Magistrate, Raigarh (CG)
2. Bhola Shankar Srivas, aged about 25 (28) years, S/o Late Dilchand Srivas, R/o Vill. & Post- Kondtarai, Occupation- Barber, P.S. Bhupdeopur, District Raigarh (CG)

---- Respondents

For Appellant : Shri A.N. Bhakta, Advocate

For Respondent 1/State : Shri Lav Sharma, Panel Lawyer

For Respondent 2 : Shri Abhishek Saraf, Advocate

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**JUDGMENT ON BOARD****22/10/2018**

1. This appeal is preferred against the judgment dated 23.11.2010, passed by the 4th Additional Sessions Judge (FTC), Raigarh (CG) in Criminal Appeal No. 26/2009, wherein the said Court has allowed the appeal of respondent No.2 and acquitted him of the charge under Sections 451 and 354 of the IPC for house trespass and using criminal force to outrage the modesty of the prosecutrix.

2. In the present case, prosecutrix is PW1. As per version of the prosecutrix, the appellant used force on her body and that is why she assaulted him on his head with a vessel (*lota*) 3 to 4 times. Version of the

prosecutrix is rebutted by the version of Revati Bai (PW7). As per version of this witness, the prosecutrix first used abusive language against the respondent and then assaulted him with the vessel. This witness has clearly stated that no criminal act was performed by the respondent during the incident. Looking to the entire evidence, the lower appellant court opined that no injury was found on the head of the respondent which falsify the story put forth by the prosecutrix that she assaulted the respondent multiple times by a vessel.

3. Case of the prosecution is based on the evidence of the prosecutrix, but her version is not of sterling quality. It is a settled law that the accused is presumed to be innocent unless contrary is proved. His innocence is further strengthened by the order of acquittal. Once he has been acquitted on the ground that version of the prosecutrix is not reliable, which is supported by her statement, this Court has no reason to record a contrary finding. It is not a case where judgment of the lower appellate court is based on extraneous or irrelevant matter. When the judgment is based on relevant material placed before it, the same is not liable to be interfered with invoking jurisdiction of appeal.

4. Accordingly, the appeal is liable to be and is hereby dismissed.

Sd/

(Ram Prasanna Sharma)

JUDGE