

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 209 of 2008

1. Thandaram S/o Damrudhar, aged about 22 years, Caste Gond, R/o Village Khawaspali Station House Office & Tah. Basana, District Mahasamund (CG).

---- Appellant

Versus

1. State of Chhattisgarh, Through Police Station Basana, District Mahasamund (CG)

---- Respondent

For Appellant:
For Respondent:

Shri Govind Dewangan, Advocate.
Shri Arvind Dubey, Panel Lawyer.

Hon'ble Shri Justice Pritinker Diwaker

Judgement

10/03/2016

1. This appeal is directed against the impugned judgment dated 25.1.2008 passed by the Sessions Judge, Mahasamund in S.T. No.63/2007 convicting the accused/appellant under Section 294 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 02 months & fine of Rs.500/-, in default to undergo additional RI for 15 days.
2. Case of the prosecution in brief is that 18.11.2006 at about 7.00 p.m. FIR (Ex.P-1) was lodged by complainant Jairam Banjara (PW-1) alleging in it that on that day at about 5.00 p.m. the goats of accused/appellant entered in the field and started grazing the crop standing thereon. When his son Gopinath (PW-2) was driving away the goats, the accused/appellant came there, abused him by using abusive & filthy language and also assaulted him by sickle. It is further alleged that when he tried to intervene, accused/appellant assaulted him also. On this

report, the offence under Sections 294, 506 (Part-II), 323 & 341 of the IPC was registered against the accused/appellant. On completion of investigation, charge sheet was filed against the accused/appellant for the offence punishable under Sections 294, 506 (Part-II), 323, 341 of IPC, however, the trial Court has framed the charges under Sections 294, 506 (Part-II) & 323 of IPC.

3. The prosecution in order to bring home the charges levelled against the accused/appellant examined 07 witnesses. Statement of the accused/appellant was recorded under Section 313 of Cr.P.C. in which he abjured his guilt and pleaded false implication.
4. After hearing counsel for the parties, the trial Court while acquitting the accused/appellant of the charges under Section 506 (Part-II), 323 & 341 of IPC, convicted & sentenced him for the offence as mentioned above.
5. At the outset, counsel for the accused/appellant submits that he is not pressing this appeal so far as it relates to conviction part of the impugned judgment and would confine his argument to the sentence part thereof only. He submits that the incident is said to have taken place on 18.11.2006 i.e. about 10 years back, and the appellant has already remained in jail for 47 days, therefore, no useful purpose would be served in again sending him to jail and it would be in the interest of justice if the sentence imposed on him is reduced to the period already undergone by him.
6. On the other hand supporting the impugned, counsel for the State submits that there is no illegality or infirmity in the judgment impugned and the manner in which the offence has been committed, no leniency can be shown to the appellant.
7. Heard counsel for the parties and perused the material available on record including the impugned judgment.

8. Jairam (PW-1) is the lodger of FIR (Ex.P-1). He has stated that on the date of incident at about 5.00 p.m. while he was working in his field, the goats of accused/appellant entered in the field and when his son Gopinath was driving away the goats, the accused/appellant came there and abused his son by using filthy language. When the accused/appellant tried to assault his son by sickle, he intervened and snatched the sickle. He has further stated that he and his son both have received injuries in the said incident. The incident has been witnessed by Lachhiram (P-3) & Mehataru (PW-6). This witness remained firm in the cross-examination and nothing incriminating could be elicited by the defence which makes his testimony doubtful or unreliable.
9. Gopinath (PW-2), son of the complainant, is an injured witness and he has duly supported the prosecution case. This witness has stated that the accused/appellant had uttered obscene words to him and his mother which had caused annoyance to him.
10. Lachhiram (PW-3) is an eye-witness to the incident. He has stated that at the time of incident he was working in his field. Jairam & Gopinath were also working in their respective fields. The goats of accused/appellant had entered the field of Gopinath and started grazing the crop standing thereon. When Gopinath (PW-2) was driving away the goats, the accused/appellant armed with sickle came there and started abusing Gopinath (PW-2) in the name of his mother & sister. Jairam (PW-1) had intervened, snatched the sickle from accused/appellant and in the said incident Jairam & Gopinath have received injuries.
11. Dr. R.N. Das (PW-4) is the doctor who medically examined Gopinath (PW-2) vide Ex.P-4 and noticed one abrasion of 1x1cm in the index finger and one abrasion of 1x1cm in the lady finger of right hand. He opined that injuries were simple in nature. This witness has also

examined Jairam (PW-1) vide Ex.P-5 and noticed one injury of 2x2x0.1cm on the right thumb which was simple in nature and caused by blunt object. This witness has admitted in the cross-examination that such injury could occur during scuffle between the persons for snatching sickle.

12. Chetan Yadav (PW-5) is the person who registered the FIR (Ex.P-1) and thereafter took the victims for medical examination.

13. Mehtaru (PW-6) is the another eye-witness of the incident. This witness has stated that the accused/appellant had uttered obscene words to Jairam & his wife which had caused annoyance to him.

14. Ramniwas Pandey (PW-7) is the investigating officer and he has duly supported the prosecution case.

15. Minute examination of the evidence makes it clear that on 16.10.2011 at about 5.00 p.m. in the evening the accused/appellant had uttered obscene words towards the victims i.e. complainant (PW-1) & Gopinath (PW-2), in a public place and thereby caused annoyance not only to them but also to others present there. The entire incident was witnessed by Lachhu (PW-3) & Mehtaru (PW-6) who have categorically stated that it is the accused/ appellant who had filthily abused the victims. Since nothing has been brought on record by the defence to controvert the stand of the prosecution, this Court does not find any reason to disbelieve the testimonies of the victims (PW-1 & PW-2) & eyewitness Lachhu (PW-3) & Mehtaru (PW-6), who have described the incident in a lucid manner. Thus the findings recorded by the Court below appears to have been recorded after due appreciation of the evidence of the witnesses and there is no infirmity in the same. The judgment impugned convicting the accused/appellant under Section 294 of IPC is strictly in accordance with law and that being so it is hereby maintained.

16.As regards sentence, considering the fact that the incident had taken place about 10 years back and the appellant is reported to have remained in jail for 47 days, this Court is of the considered view that it would be just and proper and in the interest of justice if the sentence imposed him is reduced to the period already undergone by him.

17.In the result, the appeal is partly allowed. Conviction of accused/appellant under Section 294 of IPC is hereby maintained, however, the jail sentence imposed on him under that section is hereby reduced to the period already undergone by him.

Sd/-

(Pritinker Diwaker)
Judge

roshan