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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1977 of 1999

Judgment Reserved on : 2.8.2017

Judgment Delivered on : 11.8.2017

State of M.P. (now Chhattisgarh) through Police Station Dhamtari, District Raipur (now District Dhamtari), Chhattisgarh

---- Appellant

versus

Moni Cheema alias Inderjeet Singh, S/o Jogendar Singh, aged 32 years, R/o Punjabi Colony Katora Talab Raipur, District Raipur (M.P.) (now Chhattisgarh)

--- Respondent

For Appellant/State	:	Shri Rajendra Tripathi, Panel Lawyer
For Respondent	:	Shri Adil Minhaj, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. By this appeal, the State has challenged the judgment dated 12.1.1999 passed in Criminal Case No.514 of 1992 by the Judicial Magistrate First Class, Dhamtari acquitting the Respondent/accused of the charges framed under Sections 294 and 353 of the Indian Penal Code.
2. The judgment of acquittal is challenged on the ground that the Court below has failed to appreciate the evidence available on record in proper perspective and has drawn completely erroneous conclusion. The Learned Judicial Magistrate First Class has committed manifest error in law by overlooking the impeccable testimony of the prosecution, particularly, that of Complainant Jivan Singh (PW-3), who has very categorically deposed the necessary ingredients of the offence charged.

3. Learned Counsel appearing for the Appellant/State submitted that Complainant Jivan Singh (PW-3) has very categorically deposed the necessary ingredients of the offence charged and the defence/Respondent never challenged the said statement of Jivan Singh before the Court. Therefore, the Trial Court has committed gross error in law.
4. On the other hand, Learned Counsel appearing for the Respondent/accused supported the impugned judgment of acquittal and argued that the prosecution has utterly failed to prove the essential ingredients of the offence charged and the Court below has rightly acquitted the Respondent/accused.
5. I have heard Learned Counsel appearing for the parties and perused the judgment impugned and the record of the Court below.
6. As per the case of the prosecution, on 4.5.1990 at about 5:00 p.m., Complainant Constable Jivan Singh (PW-3) was on duty at Gol Bazar, Dhamtari for making control over traffic. The Respondent/accused came in a car bearing registration No.MKS 8065, parked the same at the centre of the main road in Gol Bazar and thereby caused obstruction to the traffic. Constable Jivan Singh objected to the parking of the said car at the centre of the main road and asked the Respondent to remove and take the car ahead from there immediately. The Respondent refused to take the car ahead and used filthy words against Constable Jivan Singh in the said public place. He also manhandled Constable Jivan Singh and as a result thereof uniform of Constable Jivan Singh torn. Thus, the Respondent by force prevented Constable Jivan Singh from performing his official duty. First Information Report of the

incident was lodged in Police Station Dhamtari. After investigation, a charge-sheet was filed against the Respondent/accused. After trial, vide judgment dated 12.1.1999, the Trial Court acquitted the Respondent of the charges framed against him holding that the prosecution has failed to substantiate the charges against the Respondent.

7. During the trial, the prosecution examined total 7 witnesses. Out of them, Constable Jivan Singh (PW-3) is the Complainant/victim. Basant (PW-2), Amarlal (PW-4) and Raju (PW-5) are eyewitnesses of the incident.
8. Jivan Singh (PW-3) has deposed that on 4.5.1990, he was posted as a Constable in Police Station Dhamtari. He further deposed that at about 5:00 p.m., at Gol Bazar, Dhamtari, he was on duty for making control over traffic. The Respondent came there in a taxi bearing registration No.MKS 8065 and parked the same at the centre of the Gol Bazar. He prevented the Respondent from parking the taxi at the centre and asked him to take his taxi ahead, but, the Respondent refused to take the taxi ahead and said that his taxi shall remain parked at the same place and pushing him away the Respondent began to move ahead. A scuffle took place between them. He further deposed that at that time the Respondent abused him. One of the eyewitnesses, Basant (PW-2) has not corroborated the statement of Jivan Singh (PW-3). Eyewitness Amarlal (PW-4) has deposed that after parking his vehicle in front of the Gol Bazar the Respondent was going to chew betel. Jivan Singh (PW-3) asked him to remove his car. On this, a dispute arose between them and thereafter a scuffle took place between them for the key of the car. As per his statement,

the Respondent did not abuse Jivan Singh (PW-3).

9. Eyewitness Raju (PW-5) has not supported the case of the prosecution.
10. As per the statement of Jivan Singh (PW-3), at the time of incident, he was on duty for making control over the traffic, but in support of this, the prosecution has not submitted any document showing his deployment at the relevant place.
11. Amarlal (PW-4) has categorically stated that a scuffle had taken place between Jivan Singh (PW-3) and the Respondent/accused for the key of the vehicle. Jivan Singh (PW-3) has also stated the same version.
12. From the evidence discussed above, it does not reveal that the alleged act of the Respondent/accused prevented Constable Jivan Singh (PW-3) from discharging his official duty. Therefore, the offence under Section 353 of the Indian Penal Code is not proved beyond doubt. Jivan Singh (PW-3) has not stated in his deposition that the words heard from the Respondent/accused used against him at the time of incident were filthy. Thus, the offence under Section 294 of the Indian Penal Code is also not made out against the Respondent.
13. It is the duty of the prosecution to prove its case beyond all shadow of doubts. The prosecution cannot stand on the legs of defence or cannot take benefit of weakness or lacuna of defence. In the instant case, on account of the self contradictory evidence of the prosecution, no interference with the impugned judgment of acquittal is called for. The finding of the Court below is just and

proper and does not suffer from any illegality.

- 14.** I do not find any merit in the present appeal. Resultantly, it is liable to be and is hereby dismissed.
- 15.** Record of the Court below be sent back along with a copy of this judgment forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE