

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 781 of 2006

- Manoj Kumar s/o. Jugal Kishore Agrawal, age 22 years r/o. Stationpara, Ward No. 17, Sakti, PS Sakti, District Janjgir Champa (CG).

---- Appellant.

Versus

- State Of Chhattisgarh SHO PS Sakti, District Jangir Champa (CG).

---- Respondent

For Appellant in : Mr. Ali Asgar, Advocate

For Respondent/State : Mr. Anil S. Pandey, Govt Advocate.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

10-11-2017

1. This appeal is directed against the judgment of conviction and order of sentence dated 20-9-2006 passed by the Special Judge (under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 Bilaspur (CG) in Special Criminal Case N. 52 of 2006 wherein the said court convicted the accused/appellant under Sections 294, 323 and 506 Part II of the IPC and sentenced him to undergo RI for three months and fine of Rs. 500/-, RI for six months and fine of Rs.1,000/- and RI for one year and fine of Rs.1,000/- with default stipulations.
2. In the present case, name of the prosecutrix is Laxmin Bai. It is alleged that on 14-1-2006 at about 11.30 pm accused/appellant entered near the house of the prosecutrix and uttered obscene words, assaulted her and threatened her. The matter was reported to Police Station established for Tribal Welfare as per

Ex.P/5. After registration of first information report, Police investigated the matter and charge-sheet was filed against the accused/appellant and after completion of trial, the appellant was convicted and sentenced as mentioned above.

3. Learned counsel appearing for the accused/appellant submit as under:

(i)	That there is material contradiction and omission in the statement of the prosecutrix and same is overlooked by the trial Court and again the trial Court over looked the statement of PW/6 Anand Kumar and no offence is made out against the accused/appellant even then the trial Court recorded the finding of conviction.
(ii)	That there is inordinate delay in lodging the first information report and same is not explained even then the trial Court ignored the fact and came to a wrong conclusion.
(iii)	That as the ingredients of offence are not established, finding of the trial Court is liable to be reversed.

4. As against the aforesaid submissions, learned State counsel supporting the impugned judgment has submitted that the impugned judgment is strictly in accordance with law and there is no illegality or infirmity in both the appeals warranting any interference by this Court.

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

6. Prosecutrix (PW/1) deposed that on 14-1-2006 the accused/appellant came to her house, the door of the house was closed and then he used obscene words out of her house and threatened her. When she opened the door, he dragged her by catching her head. Version of this witness is supported by PW/2 Annapoorna, PW/3 Upasin Bai. All the witnesses have been subjected to searching cross examination but nothing could be elicited in favour of the accused/appellant. Again version of this witness is supported by PW/5 P.C. Roy, and PW/7 Ramesh Pandey, who was Police Officer and investigated the matter. The obscene words uttered by the accused/appellant out of the house of the prosecutrix and narrated by the prosecutrix in the Court show that these words were related to sex and moral and same are obscene words. Using obscene words in public place and thereby annoying the prosecutrix and others is an offence under Section 294 of the IPC and the finding arrived at by the trial Court regarding this offence is hereby affirmed.
7. Again it is stated by PW/1 Laxmin Bai that accused/appellant caught her hands, dragged her and assaulted her and that caused injuries on her neck, hand, face and feet. This version is supported by PW/2 Annapoorna and there is nothing on record to disbelieve the same. Version of all the witnesses is reliable piece of evidence and the act of the accused/appellant does not fall under any exception mentioned between under Section 76 and 106 of IPC. The accused/appellant had knowledge that assault to the prosecutrix will cause pain to her and thereby he has

voluntarily caused injury to prosecutrix, therefore, the act of the accused/appellant is an offence under Section 323 of the IPC for which the trial Court convicted and accused/appellant and the same is hereby affirmed.

8. PW/1 Laxmin Bai deposed that accused appellant threatened her to kill, but this version is not supported by any of the witnesses. There is no evidence that the accused was in a position to execute his threatening at the time of incident. In this way, it was blank threat in which there was some words but there is no substance.
9. In order to establish the offence under Section 506 of IPC, it must be established that accused/appellant was able to execute his words at the time of uttering the same, but that is not the case here. Therefore, the offence under Section 506 Part II of the IPC is not made out and conviction under this Section by the trial Court is hereby set aside. The accused/appellant is acquitted of the charge under Section 506 Part II of the IPC. For offence under Sections 323 and 294 of the IPC, corporeal punishment is not required. The accused/appellant remained in jail during trial from 17-2-2006 to 22-2-2006 i.e., five days.
10. Considering the fact that the offence took place in the year 2006 i.e., 11 years back and looking to the detention period of the appellant, this court is of the opinion that ends of justice would be served if the sentence of the accused/appellant is reduced to the period already undergone while maintaining conviction under Section 294 and 323 of the IPC. Now the accused/appellant is sentenced to the period already undergone by him for offence

under Sections 294 and 323 of the IPC. The fine amount shall remain intact.

11. With the aforesaid modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju