

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**ACQA No. 2 of 2006**

**Judgment reserved on 30-01-2018**  
**Judgment delivered on 08-02-2018**

State of Chhattisgarh Through Police Station Chakarbhata,  
 Bilaspur District Bilaspur (C.G.) **---- Appellant**

**Versus**

1. Shankerdayal, S/o Kamla Prasad Dwivedi, Aged About 30 Years,  
 R/o Village - Parsada, Thana Chakarbhata, Gram Shivpura (Rewa),  
 Thana Laur, Rewa Madhya Pradesh
2. Vidhyadhar @ Vidyasagar, S/o. R. R. Tiwari, R/o Nayapara, Sirgitti,  
 Thana Tarbahar Bilaspur Chhattisgarh At and Post Zone III,  
 Kursipar, Sector-11, P. S. Chhawani, Distt. Durg Chhattisgarh,  
 District : Durg, Chhattisgarh **---- Respondents**

For Appellant/State :- Mr. Arvind Dubey, Panel Lawyer  
 For respondent :- Mr. Vinay Dubey, Advocate.

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**Hon'ble Shri Prashant Kumar Mishra,**  
**Hon'ble Shri Ram Prasanna Sharma, JJ**

**CAV Judgment**

**Per Ram Prasanna Sharma, J**

1. This acquittal appeal is directed against the judgment dated 10-03-2004 passed by the Special Judge (Scheduled Caste and Scheduled Tribe(Prevention of Atrocities) Act 1989) Bilaspur, in Session Trial No. 113 of 2001, wherein the trial Court acquitted the present two respondents and three other persons namely Krishna Kumar, Shailendra Banjare and Heera Lal Tripathi, for

commission of offence punishable under Sections 307/149, 323/149, 427/149, 147, 148, 294, 506-B of the Indian Penal Code.

2. In the present case, name of two injured persons are Rajesh Trivedi and Gurudev Awasthi. Charge sheet under Section 307/149 was filed for attempt to commit murder of injured Rajesh Trivedi and charge sheet under Section 323/149 was filed for voluntarily causing simple injury to one Gurudev Awasthi.
3. As per prosecution case, there is business rivalry between injured Rajesh Trivedi and late accused Heera Lal Tripathi as both were running security office to deploy the persons for security and there was conflict of interest. On 27-10-2000 at 8.30 pm, accused late Heera Lal Tripathi called Rajesh Trivedi at his security office situated at Parsada for resolving the differences between them. When Rajesh Trivedi and Gurudev Awasthi reached to the office at Parsada, Shailendra Banjare, Krishna Kumar and late Heera Lal Tripathi were present there and the respondents assaulted Rajesh Trivedi and Gurudev Awasthi and abused obscene words against them and threatened them to kill after forming unlawful assembly with deadly weapons and again caused damage to Car bearing registration No. M.P. 26-F4574 belonging to Rajesh Trivedi in order to cause injury. Gurudev Awasthi reported the matter as per Ex.P-7; after registration of FIR, the matter was investigated. After completion of investigation, charge sheet was filed against the respondents. Respondents pleaded innocence and therefore, the trial was conducted. After examination of all the witnesses, statements of the respondents were recorded under Section 313 of the Code.

After hearing the parties, the trial Court acquitted the respondents as aforementioned.

4. State has not filed any appeal against acquittal of Shailendra Kumar Banjare for the reason best known to the authorities. During the pendency of the appeal Krishna Kumar and Heera Lal Tripathi have died and appeal was abated regarding these two persons, therefore, the appeal is being heard for Shankardayal and Vidyadhar @ Vidyasagar only.

5. Learned counsel for the State submits as under;-

(I) That the case of the prosecution is based on direct evidence duly supported by medical evidence which is clinching in nature, yet, the trial Court acquitted the persons which is contrary to the facts and circumstances of the case.

(ii) Omissions and contradictions are bound to occur because there is limit of memory of witnesses but the same is not sufficient to throw over board entire case of the prosecution.

(iii) The trial Court ought to have believed the version of prosecution but erred in disbelieving the same and judgment of acquittal suffers from material illegality

6. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is based on proper marshaling of the evidence adduced by the prosecution and same is not liable to be disturbed while invoking jurisdiction of the appeal.

7. We have heard learned counsel for both parties and perused the record of the trial Court.
8. Gurudeo Awasthi (PW-2), Rajesh Trivedi (PW-8), Mohammad Abdulla Hanifi (PW-9), Tilak Singh Thakur (PW-11), Devendra Soni (PW-12) were produced before the trial Court and all of them have claimed to be eye-witnesses. As per version of Gurudeo Awasthi (PW-2), accused Heera Lal Tripathi, Vidyadhar @ Vidyasagar, Krishna Kumar and Shailendra Banjare have assaulted Rajesh Trivedi by using iron rod, club and pipe. He further deposed that Krishna Kumar and Shailendra Kumar Banjare assaulted him when he tried to intervene. But version of this witness is contradicted by FIR (Ex.P-7) lodged by him on the date of incident. In his previous statement in the FIR he stated that Heera Lal Tripathi was having one cricket bat while in the Court he deposed that Heeralal was having rod. This witness deposed that Vidyasagar Tripathi came there by motorcycle but name of Vidyasagar Tripathi is not mentioned in the FIR lodged by him.
9. As per version of Rajesh Trivedi (PW-8) accused Heera Lal Tripathi and Shankar Lal assaulted him but name of Shankar Lal is not mentioned in the FIR. As per version of Mohammad Abdulla Hanifi (PW-9) he is not firm whether Shankar Lal was present at the time of incident. He deposed that Heera Lal Tripathi left the place after uttering some abusive language. Tilak Singh Thakur (PW-11) deposed that he identified Heera Lal Tripathi by name and others with face but in his previous statement recorded under Section 161 of the Cr.P.C. he stated that Krishna Kumar

and Vidyadhar Tripathi are known to him. Devendra Soni (PW-12) deposed that Heera Lal Tripathi and Krishna Kumar assaulted Rajesh Trivedi but in his statement recorded under Section 161 of the Cr.P.C. he named Shailendra Banjare, Krishna Kumar, Vidyadhar and H.L. Tripathi as culprits.

10. In the present case, five persons were charged for commission of offence. When number of persons are prosecuted, it is the duty of the prosecution to establish overt act of all the persons, if they are committing the offence in furtherance of common object, their object or intention has to be established. But in the present case, only three persons were named in the FIR, during the investigation no identification parade was conducted to ascertain as to who are the other persons who formed unlawful assembly. For commission of offence under Sections 147 and 148 of the IPC, formation of unlawful assembly by five or more person is condition precedent and unless assembly of five persons or more is established charge under Sections 147 and 148 of the IPC cannot sustain. From the evidence of witnesses adduced before the trial Court and their previous statement it was difficult for the trial Court to hold that all five persons against whom charge sheet was filed have made unlawful assembly before commission of offence and in committing physical assault against Rajesh Trivedi and Gurudeo Awasthi. It was also not established as to what kind of weapon was seized in possession of each of them or they were present on the spot since beginning of quarrel. It was also not established as to who actually caused damage to the vehicle of

Rajesh Trivedi and by which means? Evidence adduced on this count was shaky, therefore, it was difficult for the trial Court to hold that all persons have intention to cause damage to the property of Rajesh Trivedi.

11. Offence under Section 294 and 506 (B) of the IPC is objective in nature. It should be established for these offences specifically as to who really uttered obscene words in public place that caused annoyance to others. Specific word with specific person is condition precedent for establishing these offences. Section 294 of the IPC is made punishable because of its gravity as it may endanger public peace. It does not contemplate a prosecution on account of personal quarrel between two persons who may be abusing each other filthily. The test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. In the present case, it was not established that any specific person has used specific words which was obscene. Unintentional abuses are not obscene words and Section 294 of the IPC does not attract for such abusive words.

12. For commission of offence under Section 506 (B) of the IPC, only uttering some words is not sufficient which had only sound and fury but it must convey well formed determination to carry threat into execution. When there is version of witnesses contradicting each other and made differently in different stages, the trial Court rightly found that it is not safe to convict all or any of them. The State has not preferred any appeal against the

acquittal of Shailendra Kumar Banjare. Again, Heera Lal Tripathi and Krishna Kumar died and now only two persons are party in the appeal and names of both these persons namely Shankardayal and Vidyadhar @ vidyasagar were not mentioned in the FIR, therefore, it would not be proper for us to hold these two persons guilty as author of crime.

13. In view of the above, the finding recorded by the trial Court is based on legally admissible evidence. Though it can be re-appreciated, but looking to the facts and surrounding circumstances of the case, the same is not liable to be interfered while invoking jurisdiction of the appeal. Accordingly, the appeal fails and is hereby dismissed.

Sd/-

**Judge**

**(Prashant Kumar Mishra)**

Sd/-

**Judge**

**(Ram Prasanna Sharma)**