

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**ACQA No. 200 of 2010**

- State Of Chhattisgarh

---- Appellant.

Versus

- Badhu s/o. Panchu Raut, aged 47 years r/o. Taregaon Jungle, PS Bodla, District Rajnandgaon (CG).

---- Respondent

For Appellant/State	Mrs. Madhunisha Singh, Panel Lawyer
For respondent	None

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

Judgment**Per Ram Prasanna Sharma, J****(24-1-2018)**

1. This acquittal appeal is preferred against the judgment dated 3-8-1998 passed by the Special Judge, Rajnandgaon (under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989) for short, the Act, 1989 in Special Case No.60 of 1997 wherein the said Court acquitted the respondent from the charges under Section 294, 326 and 426 of IPC and Section 3 (1)(x) and 3(2)(v) of the Act, 1989.
2. As per prosecution case prosecutrix Budhia Bai is Gond by caste and a member of Scheduled Tribe while respondent is not a member of Scheduled Caste or Scheduled Tribe. It is alleged that the respondent had gone to the field with his cattle for grazing and in the said field

he used obscene words against the complainant and with intention to cause damage to her crop of Grams, intentionally left his three cows in the field for grazing the crop. Upon objection by the complainant, he assaulted her by *Tabbal* (axe). On the report of the complainant *Dehati Nalsi* was recorded and offence was registered as per Ex. P/7. Complainant was sent for medical examination and the matter was investigated. The statements of the witnesses were recorded under Section 161 of the Cr.P.C After completion of investigation charge-sheet was filed against the respondent. Respondent did not plead guilty, therefore, trial was conducted. After examination of prosecution witnesses, statement of respondent under Section 313 of Cr.P.C., was recorded and after hearing both the parties, the Special Court acquitted the respondent as mentioned above.

3. Learned State counsel submits as under:

- i) Case of the prosecution is established by the statement of the complainant and the medical evidence and again it is established by seizure of articles but the trial Court disbelieved the same against the settled principles of law. The trial Court committed an error in holding that no offence is made out under Special Act.
- ii) There are some minor contradictions and omissions in the statements of the witnesses but that is not sufficient to discard their testimonies in its entirety.

4. We have heard learned counsel for the State and perused the record.

5. PW/1 Budhiya Bai and PW/7 Dau are the witnesses of the incident.

PW/2 Bundabai is a person to whom Budhiya Bai informed about the

incident. PW/3 Narayan is son of Baburam to whom Mangal (PW/5) informed about the incident. Mangal (PW/5) is a person to whom his mother-in-law and wife informed about the incident. Dhaniya Bai (PW/6) deposed that she has not seen the incident.

6. As per version of PW/1 Budhiya Bai, respondent was grazing his cattle near her house and he was having one *Tabba* in his hand. She further deposed that respondent uttered obscene words against her but the words stated by this witness is different from the words stated before the Investigating Officer on the date of incident. Abusive words are obscene words only when it is intentional and if the words are uttered unintentional without understanding the meaning, the said word is not obscene word. The appellant is charged under Section 294 of the IPC, the essence of the crime under Section 294 of the IPC consists in creating a public nuisance which because of its gravity being of a public nature may endanger public peace. In order to bring home the guilt of the accused for an offence under Section 294 of the IPC the prosecution has to establish that the words uttered were obscene. The test of obscenity is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences. Filthy abuses are not uncommon. It had no more significance than mere platitudinous utterances signifying the enraged state of the persons' mind. The words which have no literal significance cannot fall in the purview of obscene words. When Budhiya Bai stated different words in different stage of inquiry/trial, her version is not worthy of credence on the point. Looking to the changing version of the complainant and further

looking to the use of unintentional uttering of words, it is not established that respondent uttered obscene words in public place to cause annoyance. In this way, the trial Court was right in concluding that offence under Section 294 of the IPC is not established.

7. Budhiya Bai (PW/1) deposed that respondent assaulted over her hand by *Tabbal*, but eye-witness PW/7 Dau would depose that there had been scuffle between Budhiya Bai and respondent and thereafter he left the place. He further deposed that one *Tabbal* was hanging in the hand of the respondent.
8. In view of the evidence of Dau (PW/7), there is every possibility that in the scuffle the complainant came into contact of *Tabbal* and that caused injury. As per Dr. Kathlam Singh (PW/8), he found one lacerated wound in the left arm of Budhiya Bai and after examination of x-ray, he did not find any grievous injury like fracture. From the statement of medical expert, it is established that injury found in the arm of Budhiya Bai is simple in nature. When the injury is simple in nature, it is doubtful looking to the statement of PW/7 Dau that same is intentionally caused by the respondent. When there was scuffle, there is every likelihood of unintentional injury caused in the hand of Budhiya Bai. The finding arrived at by the trial Court that it is not a case of voluntarily causing injury is one of the plausible view and looking to the evidence we are of the view that same is not liable to be interfered and acquittal of respondent for commission of offence under Section 326 of IPC seems to be proper.
9. From the statement of Budhiya Bai (PW/1), it appears that respondent was grazing his cattle near the house of Budhiya bai.

Budhiya Bai nowhere stated that respondent dragged his cattle into the her field with intent to cause wrongful loss or damage to her crop. Section 426 of the IPC punishes the offence of mischief which is defined in Section 425 of the IPC. When anyone with intention to cause wrongful loss or damages the others property, then Section 425 of the IPC comes into play, but that is not the case here, as per version of complainant herself there is no clear evidence regarding damage of crop and value of crop. In absence of sufficient evidence, it was not established before the trial Court that any mischief was committed by the respondent and the trial Court was right in acquitting the respondent under Section 426 of the IPC. Again, there is no evidence that any offence is committed on the basis of caste, therefore, Sections 3 (1)(x) and 3(1)(v) of the Act, 1989 are not attracted in the facts and circumstances of the present case.

10. In view of the above, finding arrived at by the trial Court is not liable to be interfered while invoking jurisdiction of the appeal. Accordingly, the appeal fails and is same hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Ram Prasanna Sharma)

Raju

