

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 85 of 2017

- Sunil Jangde S/o Kailash Jangde Aged About 26 Years R/o Shiv Mandir Chowk, Raja Talab, Raipur, Police Station Civil Line, District Raipur Chhattisgarh. , Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through The Station House Officer, Police Station Civil Line, District Raipur Chhattisgarh. , Chhattisgarh
2. Prakash Joseph S/o Late John Joseph Aged About 46 Years R/o Shiv Chowk, Raja Talab, Raipur, District Raipur Chhattisgarh. , District : Raipur, Chhattisgarh
3. Prashant Joseph S/o Prakash Joseph Aged About 19 Years R/o Shiv Chowk, Raja Talab, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
4. Prafulla Joseph S/o Prakash Joseph Aged About 18 Years R/o Shiv Chowk, Raja Talab, Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Respondents

For Appellant	:	Mr. Ashish Surana, Advocate.
For Respondent 1/State	:	Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

27/11/2018

1. Heard.
2. This Acquittal Appeal is preferred against the judgment dated 12.3.2015 passed by the 4th Additional Sessions Judge, Raipur (CG) in Criminal Appeal No. 69/2014, wherein the said Court has allowed the appeal filed by respondents 2 to 4 against the judgment dated 28.2.2014 passed by the Judicial Magistrate First Class, Raipur in Cr. Appeal No.319/2013 and set aside the conviction.
3. This appeal is preferred by victim Sunil Jangde. Respondents 2 to 4 were charge-sheeted for the offence under Sections 452,

294, 323, 506 Part II r/w Section 34 IPC for causing voluntarily hurt to Sunil Jangde after preparation of assault and used obscene words in public place and threatened him to kill.

4. Section 452 IPC is related to preparation before commission of offence. In the present case, prosecution has examined as many as 5 witnesses but, no one had stated before the trial Court regarding preparation of assault before commission of offence. It is not the case where any weapon is collected for committing the offence before crime, therefore, charge under Section 452 IPC was not established.
5. As per version of Sunil Jangde (PW1), Naili Subhishini Jangde (PW2) and Sarika Jangde(PW3), Sunil Jangde was assaulted by Panch (one iron object wore in forefingers). Statement of these witnesses is general in nature. From their statement it is not clear as to who had really assaulted by Panch out of four persons charged in the case. Deepak Gwal (PW5) made statement differently and as per version of this witness four persons have assaulted Sunil Kumar by club. Version of this witness is also general in nature. It is not clear as to which of the respondent has assaulted by which weapon on which part of the body of the victim. Therefore, it was not objectively established that any specific part of the body of the victim was injured by any specific respondent by any specific weapon. Apart from that no medical evidence is adduced by the prosecution before the trial Court.
6. Learned counsel for the appellant placed reliance in the matter of **Ram Gulam Chaudhary And Others Vs. State of Bihar**

reported in (2001) 8 SCC 311 and Akhtar And Others Vs. State of Uttaranchal reported in (2009) 13 SCC 722.

7. In the latter case medical report was admitted under Section 294 Cr.P.C. In the former case it is held that conduct of the Investigating Officer could not be a ground for discarding other evidence. Looking to the facts and circumstances of the present case, the case laws cited on behalf of the victim are clearly distinguishable. For commission of offence under Section 294 IPC, there is nothing in the statement of victim Sunil Jangde (PW1).
8. For commission of offence under Section 506 Part II IPC, the victim has not stated that any of the respondent had threatened him. Version of Naili Subhashini Jangde (PW2) and Sarika Jangde (PW3) on this count is general in nature. Both have not specifically stated as to who really threatened him. For establishing offence under Section 506 Part II IPC, it has to be established that anyone was determined to execute his threat. Looking to the bald statement offence under Section 506 Part II IPC is also not established.
9. Though Sarika Jangde (PW3) has deposed that some obscene words were used by the respondents but her version is also general in nature. She did not state anything specific against any specific respondent.
10. For commission of offence under Section 294 IPC it has to be established that obscene words are uttered in public place to cause annoyance. 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 to be deprave and corrupt those whose minds are open to such immoral influences.

11. Filthy abuses are not uncommon. It had not more significance than mere platitudinous utterances signifying the enraged state of the person's mind. The words which have no literal significance cannot fall in the purview of obscene words. From the evidence it is not specifically established beyond doubt that any obscene words were uttered by any of the specific respondent, thus offence under Section 294 IPC is not established against the respondents.
12. Looking to the entire evidence charge under Section 294 IPC is also not established.
13. The Lower Appellate Court has discussed the evidence in its entirety and this Court has no reason to take a contrary view. It is not a case where the respondents should be called for full consideration of the case. Accordingly, the appeal is dismissed at the motion state itself.

Sd/

(Ram Prasanna Sharma)
Judge