

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.490 of 2001**

Chhabil Yadav (Raut), aged about 28 years, S/o. Shri Laxman Yadav, Labour, R/o. Village Masul, PS Gendatola, Tah. & Distt. Rajnandgaon (CG)

---- Appellant

Versus

The State of Chhattisgarh,

---- Respondent

For the appellant : Shri PKC Tiwari, Sr. Advocate with Shri
Shashi Bhushan Tiwari, Advocate
For the respondent/State : Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****20.4.2018.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 04.5.2001 passed by Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act 1989, Rajnandgaon in Special Case No.09/2001, wherein the said Court convicted the appellant for commission of offence under Sections 294 and 506 Part-II IPC and sentenced him to undergo rigorous imprisonment for three months and RI for six months respectively for using obscene words in public place on 11.10.2000 at about 8 am at village Masool and for intimidating Korbaharin Bai to kill her.

2. To substantiate the charges, the prosecution has examined as many as eight witnesses. Tilakdas (PW-2), Tijuram (PW-3), Kansram (PW-7), Ramgopal (PW-8) have not supported the version of the prosecution.

3. As per the version of Thakurdas (PW-1), Dukhan (PW-4), Khorbaharin Bai (PW-5), Anandram (PW-6), the appellant used words मादर चोद महारीन. As per the version of these witnesses, the appellant also uttered the words that he will bury the body of Khorbaharin Bai.

4. Now the point for consideration is whether the words uttered by the appellant falls within the mischief under Section 294 IPC. It is settled law that words which are common in nature and words of common colloquial are not obscene words. Only words related to sex or moral are obscene words. In the present case, the words used by the appellant cannot be termed as obscene words because the same is used frequently and unintentionally.

5. For commission of offence *mens rea* is essential part and if any word is uttered unintentionally it cannot be said that there is intention to commit any criminal act. Looking to the words as stated by the witnesses it cannot be held guilty for commission of offence under Section 294 IPC.

6. So far as offence under Section 506 Part-II is concerned, mere uttering of the words is not sufficient to constitute the offence but it has to be established that the appellant was in a position to execute the threat on the spot. The words were uttered in fury which has only sound and the same is without substance. When the appellant was not having any arms at the time of commission of offence or soon shown determination as to how he will be able to kill the complainant, the words are not

sufficient to constitute the offence under Section 506 Part II of the IPC. The trial Court failed to appreciate this aspect of the matter and recorded the finding against the settled principles of law which is not sustainable.

7. Accordingly, the appeal is allowed. Conviction and sentence passed by the trial Court is set aside. The appellant is acquitted of the charges framed against him. The appellant is reported to be on bail. His bail bonds shall remain operative for a further period of six months from today in terms of Section 437A of the CrPC.

Sd/-

(Ram Prasanna Sharma)

JUDGE