

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 471 of 2017**

- Ajay Vishavkarma S/o Late Shobhnath Vishavkarma Aged About 54 Years R/o Village Lodhima Majhapara, Police Station Ambikapur, District Surguja, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Police Station- Ambikapur, District- Surguja, Chhattisgarh.
2. Vikas Rajwade S/o Sndhan Ram Rajwade Aged About 24 Years R/o Village- Bhatti Kala Taraipara, Police Station- Ambikapur District Surguja, Chhattisgarh.
3. Mitthu Ram S/o Sant Lal Bargah Aged About 20 Years R/o Village- Lodhima, Police Station- Ambikapur District Surguja, Chhattisgarh.
4. Sitthu Ram @ Rambharosh S/o Sant Lal Bargah Aged About 19 Years R/o Village- Lodhima, Police Station- Ambikapur District Surguja, Chhattisgarh.
5. Mithu Ram @ Ratan S/o Ramdev Uraon Aged About 21 Years R/o Village- Lodhima, Police Station- Ambikapur District Surguja, Chhattisgarh
6. Devkumar @ Chamru S/o Sonsai Uraon Aged About 20 Years R/o Village- Lodhima, Police Station- Ambikapur District Surguja, Chhattisgarh.
7. Virendra @ Kochai S/o Sainat Ram Uraon Aged About 25 Years R/o Village- Lodhima, Police Station- Ambikapur District Surguja, Chhattisgarh.

---- Respondents

 For Petitioner : Mr. Vikash Pandey, Advocate.
 For Respondent 1/State : Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Order On Board****27/11/2018**

1. Heard on the application filed under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.
2. On due consideration, leave is granted.
3. This petition is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against order dated 8.12.2016, passed by 1st Additional Sessions Judge, Ambikapur, District

Sarguja(C.G.) in S.T. No.35/2015, wherein the said court has acquitted all the respondents 2 to 7 for the charges under Sections 147, 148, 149, 294, 452, 323 and 506 Part II of the I.P.C.

4. In the present case, name of the victim is Ajay Vishwakarma. Though this witness, who is examined as PW1 deposed that all the respondents were in possession of sword, axe and club and they assaulted him and Kedar Vishwakarma, but prosecution witness, Chandradev Tiwari (PW6) deposed that Ajay Vishwakarma assaulted respondent-Mitthuram Ram Bargah by sword. Looking to the evidence, the trial Court opined that material fact has been suppressed by the victim and if Mitthuram Bargah was attacked by Ajay Vishwakarma then he has all rights to defend himself under right of private defence of body. The injuries sustained by Ajay Vishwakarma and Kedar Vishwakarma are simple in nature, therefore, it cannot be said that any of the respondent in saving Mitthuram Bargah has exceeded right of self defence. Therefore, offence under Sections 147, 148 and 323 IPC is not made out.
5. 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.

6. 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.
7. For commission of offence under Section 506 Part II IPC, it has to be established that any of the aggressor was determined to execute threat, but from the evidence of prosecution witnesses, threatening is not established. As the fact of threatening is lacking, charge under Section 506 Part II IPC is also not established.
8. For commission of offence under Section 452 IPC, it has to be established that there was preparation on the part of any of the respondent before commission of offence. From the evidence preparation on the part of any of the respondent before commission of offence is not established. On the contrary it is established that Kedar Vishwakarma and Ajay Vishwakarma were aggressors against Mitthuram Bargah, therefore, charge under Section 452 IPC is also not established.
9. The trial Court has elaborately discussed the entire evidence and came to the conclusion that charges levelled against the

respondents are not established and this Court has no reason to interfere with the finding recorded by the trial Court and it is not a case where the respondents should be called for full consideration of the case. Accordingly, the prayer for leave to appeal is rejected.

10. Consequently, Cr.M.P. stands dismissed.

Sd/

(Ram Prasanna Sharma)
Judge

sunita