

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 42 of 2018

Smt. Devantin Bai, W/o - Shri Santosh, Aged about - 48 years, R/o - Village Semra (B) Police Station – Bhakhara, District - Dhamtari (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through - The Station House Officer, Police Station, Bhakhara District - Dhamtari (C.G.)
2. Vijay Kumar, S/o - Makhan Lal Sahu, Aged about - 18 years,
3. Kumbhkaran, S/o - Domar Singh Gond (Thakur), Aged about - 24 years,
4. Rupesh Kumar, S/o - Lakhanlal Sahu, Aged about - 24 years,
5. Makhan Lal Sahu, S/o - Sukhram Sahu, Aged about - 40 years,
No. 2 to 5 are resident of village Semra (B), Police Station, Bhakhara, District – Dhamtari (C.G.)
6. The Superintendent Of Police, Dhamtari, District - Dhamtari (C.G.)

---- Respondents

For Petitioner : Mr. D. N. Prajapati, Advocate

For State/Respondent : Mr. A. N. Bhakta, Dy. A. G.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

26/06/2019

1. Heard on application for grant of leave to appeal filed under Section 378(4) of the Code of Criminal Procedure, 1973.
2. This petition is preferred against judgment dated 31st October, 2017, passed by Additional Sessions Judge, Dhamtari (C.G.), in Criminal case No. 25/2017, where in the said court acquitted the respondents for charge under Sections 306, 294, 506 (Part–II) and 34 of IPC, 1860.

3. In the present case, name of the deceased is Domendra Das Manikpuri, who died on 15th January, 2017. Autopsy was conducted by Dr. C. L. Sahu on 16th January, 2017. After examining, the expert opined that it appears to be accidental case. From information of the expert, it is not established that it is a case of suicide.
4. To substantiate the charge, the prosecution examined as many as 20 witnesses. There is only one eyewitness on account of incident. The only evidence against the respondents that they entered into the house of Domendra and they searched Domendra for beating. In absence of any direct evidence, there is no evidence to substantiate that any of the respondents assaulted the deceased. Looking to the entire evidence, the trial Court opined that it is not a case of abatement of suicide.
5. For establishing the charge under Section 306 of IPC, the ingredient of Section 107 of IPC has to be established which may be mentioned as under:-
 - (i) instigating a person to commit an offence.
 - (ii) engaging in a conspiracy to commit an offence.
 - (iii) intentionally aiding a person to commit an offence.

Therefore, a person said to have abetted, doing of a thing when he or she instigates any person to do so with any other means of abatement besides instigating are conspiracy and intentionally aid the commission.

6. There is no live link with the act of any of the respondent and death of the deceased, therefore, the trial Court opined that the charge under Section 306 of IPC is not established.
7. For commission of offence under 294 of IPC, it has to be established that obscene words were uttered in public and to cause annoyance in the present case. The witnesses deposed that the respondent entered in the house of Domendra and use some filthy language. House of the Domendra is not in public place, therefore, the charge under Section 294 is not established.
8. The respondent is charged under Section 294 of IPC, the essence of the crime under Section 294 of 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 IPC, the prosecution has to establish that the words uttered were obscene. The test of obscenity is whether the tendency of the matter charges as obscenity is to be deprave and corrupt those whose minds are open to such immoral influences.
9. Filthy abuses are not uncommon. It had no more significance than mere platitudinous utterances signifying the enraged state of the person's mind. In the case on hand, the words uttered by respondent No. 1 are not clear, therefore, the words have no literal significance and it cannot fall in the purview of

obscene words. From evidence, it is not established that the offence under Section 294 of IPC is made out.

10. For establishing offence under Section 506 of IPC, it has to be established that the respondent was determined to execute his threat. From statement of witnesses, the only thing which is established is that the certain words were uttered at the time to incident. Mere uttering of words is not sufficient to bring home the guilt, unless the same is uttered with instant execution of threat, but that is not the case here. In absence of determination to execute the threat, the words uttered by respondent are mere fury which have sound, but no substance, therefore, the charge under Section 506 of IPC is also not established.
11. The trial Court after reassessing the entire evidence recorded that charge under Section 506 part – II is also not established. It is settled law that if two views are possible, the view which is favourable to the respondent/ accused, should be accepted. There is nothing on record to convert order of acquittal into conviction.
12. After going through the records, it is not a case where any interference of this Court is required. The trial court has elaborately discussed the entire evidence and came to conclusion that the charges leveled against the respondents is not established. After reassessing the same, this Court has no reason to record contrary finding. It is not a case where

respondent should be called for hearing again for full consideration of this petition.

13. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

Sd/-
(Ram Prasanna Sharma)
Judge

N.Mohle