

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 2321 of 2019

- The State Of Chhattisgarh Through District Magistrate Raigarh Chhattisgarh, District : Raigarh, Chhattisgarh

---- Petitioner**Versus**

1. Onkar Prasad Dubey S/o Late Hariprasad Dubey Aged About 45 Years R/o Village Chandrashekharapur, P.S. Chhal, District Raigarh Chhattisgarh,
2. Nehru Dewangan S/o Pyarelal Dewangan Aged About 42 Years R/o Village Chandrashekharapur, P.S. Chhal, District Raigarh Chhattisgarh,
3. Ramesh Agrawal, S/o Late Tarachand Agrawal, Aged About 53 Years Occupation Journalism, R/o Village Navapara, P.S. Chhal, District Raigarh Chhattisgarh,

--Respondents

and

ACQA No. 420 of 2019

- Rathbai Patil W/o Janak Ram Patil Aged About 46 Years R/o Village Chandrashekharapur (Aedu), Post - Chandrashekharapur, Police Station Chhal, Tahsil Dharamjaigarh, District Raigarh Chhattisgarh. --- (Victim),

---- Appellant**Versus**

1. State Of Chhattisgarh And Others Through Station House Officer, Police Station Ajak, Raigarh, District Raigarh Chhattisgarh. --- (Prosecution),
2. Omkar Prasad Dubey S/o Late Hari Prasad Dubey Aged About 45 Years R/o Village Chanrashekharapur, Police Station Chhal, District Raigarh Chhattisgarh. --- (Accused No.1)
3. Nehru Dewangan S/o Pyarelal Dewangan Aged About 42 Years R/o Village Chanrashekharapur, Police Station Chhal, District Raigarh Chhattisgarh. --- (Accused No.2),
4. Ramesh Agrawal S/o Late Tarachand Agrawal Aged About 53 Years Occupation Reporter, R/o Village Nawapara, Police Station Chhal, District Raigarh Chhattisgarh. --- (Accused No. 3),

---- Respondents

For the Petitioner/State : Mr. Ishwar Jaiswal, PL.
in CRMP No.2321/2019

For appellant in : Mr. Pawan Kesharwani, Advocate.
ACQA No. 420 of 2019

For State : Mrs. Ishwar Jaiswal, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

ORAL ORDER

02-12.2019.

1. As both the appeals arise out of same judgment of acquittal dated 20-2-2019 passed in Special Case (Atrocities Act) No. 16 of 2016 by the Special Judge (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Raigarh, District Raigarh (CG), wherein the said court acquitted the respondents for charge under Section 294, 506 Part II, 186, 384 read with Section 34 of IPC and Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, they are heard analogously and are being disposed of by his common order.
2. Heard on IA No.01/2019 in CRMP No. 2321 of 2019 for condonation of delay in filing the application under Section 378(3) of the CrPC.
3. On due consideration of the reasons mentioned in the application, the same is allowed and the delay of 130 days in filing the application is hereby condoned.

4. Also heard on application under Section 378(3) of CrPC for grant of leave to appeal.

5. To substantiate charge, prosecution examined as many as eight witnesses. No one was examined to prove the caste certificate of complainant namely Rathbai Patel (PW/1). As per Articles 341(1) & 342 of the Constitution of India, definition of Scheduled Caste & Scheduled Tribes is given as under.

“341. Scheduled Castes

(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification”.

“342. Scheduled Tribes

[\(1\)](#) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be

[\(2\)](#) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification”.

6. Caste certificate is not proved in the present case.

From the entire evidence adduced by the prosecution, it is not established that offence was not committed on the basis of caste. The incident took place because respondent namely Onkar Prasad Dubey reached Government Primary School, Chandrashekharapur for collecting mark-sheet of his son namely Vasu Dubey. The incident took place because

complainant was working in the school and it is not on the basis of her caste, therefore, it cannot be held that Section 3(1)(x) of the Act, 1989 has application in the present case.

7. In the present case, FIR is Ex.P/1 which is lodged by the complainant Rathbai Patil. In the said FIR it is mentioned that one Nehru Dewangan demanded Rs.30,000/- from him, but she deposed before the trial court that Nehru Dewangan and one Ramesh Agrawal both demanded the above mentioned amount (Para 2). As per version of Rathbai Patil, (PW/1), Nehru Dewangan asked her that if amount is not paid, then the matter regarding mistake in the mark-sheet shall be published in the newspaper by him and he will also publish the same through television.

8. For commission of offence under Section 384 of the IPC, it has to be established that respondent/accused puts said complainant in fear of any injury and thereby dishonestly induces her to deliver any property. In the present case, the only thing which is said as per version of complainant is that the matter shall be published in newspaper. It is not clear as to whether Nehru Dewangan had any control over newspaper or television channel for publishing the same, therefore, any word uttered by the said person is mere fury which has a sound, but has no substance. When the word has no substance, the same

cannot be termed as extortion against the complainant, therefore, charge under Section 384 of IPC is not established.

9. From the evidence of the prosecution it is not established that any obscene word was uttered by any of the respondents. 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 depraved and corrupt those whose minds are open to such immoral influences.

10. Filthy abuses are not common. It has not 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. From the evidence it is not established that any obscene words were uttered by the respondents, thus offence under Section 294 of the IPC is not established against the respondents.

11. As per version of Rathbai Patil (PW/1) respondent Onkar Prasad Dubey warned that he will see her but this word is not equivalent to any threat. For commission of

offence under Section 506 Part II of IPC, it has to be established that person threatening was determined to execute threat on the spot but that is not the case here. Any word uttered unintentionally is not sufficient to establish charge under Section 506 Part II of IPC which charge is also not established.

12. For taking cognizance of offence under Section 186 of IPC, there should be written complaint to court by public servant or by an authority to whom he is administratively subordinate as per Section 195 of Cr.P.C. If written complaint is filed, then procedure will be adopted as per Sections 200 – 204 of Cr.P.C., but that is not done in the present case, therefore, cognizance itself is not legal and charge under Section 186 of IPC is not established.

13. After evaluating the entire evidence, the trial court recorded finding of acquittal. This court has no reason to take a contrary view what is recorded by the trial court.

14. Accordingly, both Cr.M.P., and Acquittal Appeal being devoid of merit are liable to be and are hereby dismissed at motion stage itself.

Sd/-

**(Ram Prasanna Sharma)
JUDGE**

Raju