

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 29-11-2019

Delivered on 10-01-2020

CRA No. 2347 of 1999

1. Jethu Ram s/o. Amol Sahu aged about 42 years.
 2. Ram Chandra s/o. Bhaiya Lal Sahu aged 68 years.
 3. Tokhuraam s/o. Soni Lal Sahu, aged about 50 years.
 4. Lochan Bai s/o. Ubhay Ram Nai, aged about 55 years.
 5. Makhanlal s/o. Mangloo Rm Sahu aged about 40 years.
 6. Pritam Devangan s/o. Jivrakhan, aged about 52 years.
 7. Gahara Ram s/o. Ban Baj Sahu, aged 65 years.
- (All cultivators, r/o. Village Kampa, P.S. Dongargaon, Dist. Rajnandgaon, MP now CG.

---- Appellants

Versus

- State of Madhya Pradesh (now State of Chhattisgarh).

---- Respondent

For Appellants : Mr. Manoj Kumar Mishra, Advocate
appears as Amicus Curiae.

For respondent/State : Mr. Aman Kesharwani, PL.

Hon'ble Shri Justice Ram Prasanna Sharma**CAV Judgment**

1. This appeal is preferred against the judgment of conviction and order of sentence dated 25-8-1999 passed by the Special Judge, (Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989) (for short, "the Act, 1989"), Rajnandgaon (CG) in Special Trial No. 98 of 1998 wherein the said Court has

convicted the appellant for commission of offence under Sections 506 Part II of the IPC, 1860 and Section 3 (1)(x) of the Act, 1989 and sentenced them to undergo simple imprisonment for six months and to pay fine of Rs. 500/- and simple imprisonment for two years and to pay fine of Rs.1000/- with default stipulations.

2. In the present case, name of the complainant is Bhagwati Bai. As per version of prosecution, on 26-1-1998 complainant Bhagwati Bai being Surpunch of Gram Panchayat Gunderdehi was hoisting the flag at Panchayat Bhawan where appellants asked her to withdraw the report made by her against them and on refusal appellants abused her and threatened her. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced the appellants as aforementioned.

3. Learned counsel for the appellants would submit as under:

- i) There is no independent witness of the incident, therefore, version of Bhagwati Bai is not dependable.
- ii The trial court has not considered the contradiction in the statement of the complainant during investigation and statement before the trial court.
- lii) The trial court has not evaluated the entire evidence, therefore, finding of

the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6. For establishing charge under Section 3 (1)(x) of the Act, 1989, it has to be established that complainant Bhagwati Bai is a member of Scheduled Caste and the appellants are not members of Scheduled Caste or Scheduled Tribe. Scheduled Caste is defined in Article 341 of the Constitution of India, 1950 which may be read 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”.

7. In the present case, no official witness is examined to prove the caste of the complainant. In absence of evidence regarding caste, it is not established that complainant Bhagwati Bai (PW/1) comes within the definition of Scheduled Caste. The caste of the appellants is also not proved and they are not members of Scheduled Castes or Scheduled Tribes. From the evidence of Bhagwati Bai (PW/1) and Dhaluram (PW/2), it is established that people of locality gathered for hoisting of flag. No one gathered there on the basis of caste and nothing was done on the basis of caste. Bhagwati Bai (PW/1) herself was present because she was Surpunch of Gram Panchayat. Appellants were also present as they were citizens of the locality, therefore, it is not a case where anything was done on the basis of caste. Bhagwati Bai (PW/1) and Dhaluram (PW/2) have made general and bald statements. As per version of these witnesses all the appellants used abusive language against Bhagwati Bai. In view of this court, when a group of persons is prosecuted, then prosecution has to establish the act of each of the person present in a meeting, otherwise, there is possibility of punishing the innocent person. The statement made by both the witnesses is general in nature and they involved all the appellants in

one voice. It should have been clarified as to who started the act of abusing and how they have abused individually. Charge of abusing should be proved objectively and it is not safe to act on general statement.

8. From the evidence of the prosecution, it is not established that any obscene words used by the appellants. 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 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 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 beyond doubt that any obscene words were uttered by the appellant, thus offence under Section 294 IPC is not established against the appellant.

10. In the present case, statement is general in nature and same is not sufficient to establish offence against all the appellants, therefore, charge under Section 3 (1)(x) of the Act, 1989 and

Section 294 of the IPC is not established. For commission of offence under Section 506 Part II of IPC, it has to be established that the person giving threat was determined to execute his threat. In the present case, the statement of the witnesses is general in nature. It is not clear that who was determined to execute the threat . In absence of clear evidence, any word uttered in the meeting is mere fury which has sound but no substance, therefore, charge under Section 506 Part II of IPC is also not established.

11. Accordingly, the appeal is allowed. Conviction and sentence of the appellants is set aside. They are acquitted of the charges framed against them. The appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of the Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju