

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 29/11/2019

Delivered on 10/01/2020

CRA No. 676 of 2001

1. Deleted (Nand Lal Rai) Aged About 31 years As Per Honble Court Order Dated 19/07/2018. R/o- Main Road, Baradwar, Police Stationj Baradwar, District- Janjgir-Champa, Chhattisgarh.
2. Jagesh Rai S/o Chandrika Prasad Rai Aged About 30 Years R/o- Main Road, Baradwar, Police Stationj Baradwar, District- Janjgir-Champa, Chhattisgarh.
3. Radha Mohan Rai S/o Chandrika Prasad Rai Aged About 49 Years R/o- Main Road, Baradwar, Police Stationj Baradwar, District- Janjgir-Champa, Chhattisgarh.
4. Anil Rai S/o Sudarshan Rai Aged About 33 Years R/o- Main Road, Baradwar, Police Stationj Baradwar, District- Janjgir-Champa, Chhattisgarh.
5. Anand Rai S/o Radha Mohan Rai Aged About 26 Years R/o- Main Road, Baradwar, Police Stationj Baradwar, District- Janjgir-Champa, Chhattisgarh.
6. Rishi Rai S/o Radha Mohan Rai Aged About 21 Years R/o- Main Road, Baradwar, Police Stationj Baradwar, District- Janjgir-Champa, Chhattisgarh.

---- Appellants

Versus

State of Chhattisgarh Through- P.S. Baradwar, District- Janjgir-Champa, Chhattisgarh.

---- Respondent

For appellants	: Mr. Rajeev Shrivastava & Mr. Avinash Chaubey, Advocates
For State	: Mrs. Hamida Siddiqui, Dy. A.G. & Mr. Aman Kesharwani, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment dated 17.07.2001, passed by Special Judge Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Bilaspur (C.G.), in Special Criminal Case No. 17/2000, wherein the said Court convicted appellants No. 1 to 4 for charge under Sections 225/34, 186/34, 294 & 506 of Indian Penal Code and

sentenced them to undergo S.I. for 2 years each and to pay fine of Rs. 200/- each, S.I. for 9 months each, Fine of Rs. 200/- each, S.I. for 1 year, respectively with default stipulations. Further the said Court convicted appellants No. 5 and 6 for charge under Section 332 and 332/34 of IPC and sentenced them to undergo, S.I. for 2 years each, and fine of Rs. 200/- each, respectively with default stipulations.

2. As per prosecution case, there was traffic jam in the fair at Baradwar on 12th December of 1999. In that fair one bus came from Korba side and due to the traffic jam it could not pass through the fair. When rush of the fair reduced, driver of the bus tried to get the bus through the fair but due to the wire hanging near a betel shop (Pan Dukan) causing hurdle in the traffic, the bus could not get through. On request, the shop-keeper refused to remove the said wire. At the same time the station House Officer of Police Station Baradwar namely K.S. Dhruv, reached the spot and asked the shop-keeper to remove the wire. At that very time, accused Rishi Rai and Anand Rai also reached to the spot and assaulted the Station House Officer with fist and when the said police officer was taking Anand Rai and Rishi Rai to the Police Station, rest of the accused persons came there, abused the station House Officer K.S. Dhruv and took the accused Anand Rai and Rishi Rai from the custody of the Station House Officer. Matter was reported and charge-sheeted and convicted them as mentioned above.

3. Learned counsel for the appellant submits as under:-

(i) No duty certificate is proved in the present case, therefore, it is not proved that victim K.S. Dhruv (PW-6) or any other Public servant was discharging his duties as public servant.

(ii) There is no evidence that any of the public servant has been stopped from discharging his duties, therefore, offence under Section 332 and 332/34 of IPC is not established. Other Charges are not proved by reliable evidence.

4. On the other hand, learned State counsel submits that there altercation between driver of bus and owner of the betel shop, in which appellants and the complainant came there and fall in scuffle that is why the police officer intervened and assaulted by the appellants. Eye witnesses as well as other witnesses have established the fact that the complainant police officer K.S. Dhruv(PW-6) was present on the spot in discharging of his official duty and even if the duty certificate has not been collected by the prosecution and same will not sufficient to say case of the prosecution is not proved. From the evidence, charge leveled against appellants is clearly established. Even if the duty certificate was not collected by the prosecution, the other evidence is sufficient to established the guilt of the appellants. The complainant was posted there since June, 1999 and the incident took place on 12.12.1999. Therefore, it may not be said that, local people may not be knowing that, he is a police officer. There is no suggestion by the accused that the complainant was not wearing the police uniform. Looking to the act of the appellants they

deserved no mercy and their conviction and sentence should be affirmed.

5. Bus driver Natthu Singh Rathia (PW-2) deposed before the trial Court that he came from Korba and near village Baradwar (*Madai Mela*) fair was organized and his bus was stuck there, when he was trying to move the bus, it touches the electric wire which was connected to the betel shop. The owner of the betel shop did not remove the wire that is why police officer intervened.
6. As per version of police officer K.S. Dhruv (PW-6), the appellant Rishi Rai and Anand Rai assaulted him by fist. The appellant Rishi and Anand Rai intervened into the matter and when police officer K.S. Dhruv trying to take them police station, the other appellant also reached there and they rescued both persons from police custody. Version of prosecution witnesses was unrebutted during cross examination and there is nothing to disbelieve their version. From the entire evidence, it is established that appellant Anand and Rishi are involved in preventing the police officer from discharging his duty. Appellant Rishi Rai caused simple hurt voluntary to the said police personnel. It is also established from the evidence, that rest of the appellants have rescued Anand Rai and Rishi Rai from the custody of police officer. Therefore, Charge under Section 332 of IPC is established against appellants Anand Rai and Rishi Rai. From the entire evidence, charge under Section 225/34 of IPC is established against the rest of appellants.

7. So far as offence under Section 186 of IPC of 1860 is concerned, such charge could not be framed by the trial Court in absence of any complaint. As per Section 195(1)(a)(i) of CrPC, after written complaint the procedure under Section 200 to Section 203 shall be complied with but no written complaint is made out in the present case and provisions of Section 200 to Section 203 of CrPC is also not complied with. As per Section 195(1)(a)(i) of CrPC., no Court can take cognizance of offence under Section 186 of IPC unless a written complaint is filed by the concerned public servant or his higher authority. Hence, the trial Court is not in a position to convict the respondent under Section 186 of IPC. Therefore, charge under Section 186 of IPC is not established.
8. Charge under Section 294 and 506 part -II is leveled for using obscene words against Police Officer K.S. Dhruv (PW-6) and for threatening him to kill but from the evidence of the K.S. Dhruv (PW-6) it is not established that any threat was given to him. K.S. Dhruv made only general statement and it was not specific as to which of the appellant has uttered what kind of word and whether he was determined to execute his threat.
9. For establishing charge 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. 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 is 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. In the present case, it is not clear as to which of the appellant is used any obscene word, therefore, charge under Section 294 of IPC is also not established. Appellants are acquitted of the charge under Sections 186/34, 294, and 506-II of IPC.

12. Conviction of the appellant Anand Rai and Raishi Rai under Section 332/34 and conviction of rest of the appellants for offence under Section 225 of IPC is hereby affirmed.

13. Heard on point of sentence, jail sentence is not compulsory for offence under Section 332, 353 and 225 of IPC.

14. The incident took place on trivial issue, the incident took-place 20 years ago and the same is without premeditation. It was a fair in which vehicle was stuck otherwise incident would not have happened. Appellant No.1 to 4 has suffered sentence of 9 days and appellant No.5 and 6 also have suffered 5 days jail sentence. After considering the facts and circumstance of the case, jail sentence awarded to them by trial Court is reduced to the period already undergone by them. However, fine amount imposed by the trial Court shall remain intact.

15. With this modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
Judge