

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1342 of 2003**

- Umesh Sarathi, S/o Bhupendra @ Bhukhan Sarthi aged about 25 years R/o Dau Chora, Khairagarh, District- Rajnandgaon (C.G.).

---- Appellant

Versus

- State Of Chhattisgarh

---- Respondent

For Appellant : Shri G. S. Ahluwalia, Advocate.
For Respondent/State : Shri Vikash Shrivastava, Panel Lawyer

Hon'ble Shri Gautam Chourdiya, J**Judgment On Board****09/01/2020**

This appeal arises out of the judgment of conviction and order of sentence dated 19.12.2003, passed by the Special Judge, Rajnandgaon in Special Case No. 54/2003 whereby the appellant was convicted and sentenced as under:

Conviction	Sentence
Under Section 294 of IPC	Rigorous imprisonment of three months.
Under Section 323 of IPC	Rigorous imprisonment of one years
Under Section 506 B of IPC	Rigorous imprisonment of one year with fine Rs. 5,000/-, in default of payment of fine, to further undergo

	rigorous imprisonment of two months
	All sentences were ordered to run concurrently

02. Brief facts of the case are that on the date of incident i.e. 09.02.2003 at about 4.30 pm, when complainant- Vedram was making the passenger board his tempo at Itwari market, Khairagarh, at that time Indian Travels Mini Bus came there in which accused/appellant- Umesh Sarathi was working for boarding the passengers. Seeing the complainant getting the passengers into his vehicle (Tampo) appellant started abusing him filthily saying “*Sale Madarchod teri Maa ko Chodu humari bus ki Sawari tempo me le ja rahe ho*” and then assaulted him by hand & fist, due to which he sustained injuries on nose, lips & near the left eye. The appellant also threatened him that in future, if he would take their passengers in his Tampo like this, he (appellant) would kill him. Thereafter, prompt FIR (Ex. P-1) was lodged by the complainant on the same day. Spot maps (Ex. P/2 & P/3) were prepared. Dr. S. S. Chhabada (PW-5) has conducted medical examination (Ex.P-4) of the complainant, in which, he found contusion in the size of 3” x 2” with one lacerated wound in the center of contusion in the size of 1/2” x 1/2”. Doctor also noticed one lacerated wound in center in the size of 1” x 1/2” over inner side of left nostril. These injuries were caused by hard & blunt object. The incident was witnessed by Ratan (PW2), Kanhaiya (PW3) & Puran (PW7).

3. After investigation charge-sheet under Sections 294, 323 & 506 (part-II) of Indian Penal Code (in short “IPC”) and 3 (1) (x) of the

Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 (henceforth "SC/ST Act") was filed against the accused appellant. After filing of chargesheet, the trial Judge framed charge against the accused under Sections 294, 323 & 506 (part II) of the Indian Penal Code & Section 3 (1) (X) of the SC/ST Act.

4. So as to hold the accused/appellant guilty, the prosecution examined as many as 7 witnesses namely- Vedram (PW-1), Ratan (PW-2), Kanhaiya (PW-3), Tarachand Bagde (PW-4), Dr. S. S. Chchabda (PW-5), Vijay (PW-6) and Puran (PW-7). Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. No defence witness has been examined on behalf of the accused/appellant.

5. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned judgment convicted and sentenced the appellant as mentioned in para- 1 of this judgment.

6. Learned counsel for the appellant submits that due to enmity between the complainant & accused regarding boarding of the passengers in their vehicles, both have scuffled and dispute arose between them, as a result thereof, complainant fell down & sustained multiple injuries. He also submits that appellant did not use filthy language or abused nor threatened complainant- Vedram (PW1) therefore, learned trial Court has erred in convicting the accused/appellant for the aforesaid offences. He alternatively submits that incident happened on the trivial issue and he has no criminal

antecedent therefore, looking to the simple injuries sustained by the complainant, it is prayed that the appellant may be acquitted of the charges leveled against him or give him benefit of probation of offender Act.

7. On the other hand, learned counsel for the State while supporting the impugned judgment submits that statement of the complainant (PW-1) is corroborated with the MLC report & prompt FIR as well as the evidence of independent witness Kanhaiya (PW 3), therefore, conviction of the appellant is based on proper appreciation of the evidence available on record and, as such, there is no scope for interference in the judgment impugned.

8. Heard counsel for the respective parties and perused the material on record.

9. It is not disputed by both the counsel appearing for the parties that the dispute arose on the issue of boarding of the passengers in their vehicle.

10. Complainant- Vedram (PW-1) has stated, in paragraph 5 of his statement, when he was making the passengers board in his vehicle, at that time Indian Travels Mini Bus came in which accused/appellant- Umesh Sarathi was working for boarding the passengers and at that point of time, both the persons i.e. complainant & accused were trying to carry the passengers in their vehicle and on account of which, dispute arose between them. He also stated in paragraph 1, 2 & 3 of his statement that when he was boarding the passengers on the date of incident at about 3,00 pm the appellant/accused came and started abusing "*Sale Madarchod teri Maa ko Chodu humari bus ki Sawari*

tempo me le ja rahe ho” and then assaulted him by hand & fist. Just after the incident the complainant lodged FIR (Ex. P/1). Spot maps Ex. P/2 & P/3 are also prepared & proved by Patwari, Tarachand Bagde (PW04).

11. Ratan (PW02) has stated in para one of his court statement that at the time of incident the accused abused the complainant by using filthy language which were annoying the public.

12. Kanhaiya (PW03) has specifically & categorically stated that when the dispute arose between the complainant & accused regarding boarding of the passengers the accused was uttering obscene words and due to which they quarreled and accused assaulted the complainant.

13. Dr. S. S. Chhabda (PW-5), prepared the MLC report (Ex.P-4) of the complainant in which he found contusion in the size of 3” x 2” with one lacerated wound in the center of contusion in the size of 1/2” x 1/2”. Doctor also noticed one lacerated wound in center in the size of 1” x 1/2” over inner side of left nostril. These injuries were caused by hard & blunt object. He also suggested in his cross-examination if the two persons scuffle and one person who falls down he can sustain the injuries as suffered by the complainant.

14. Looking to the above facts & circumstance of the case, the unrebutted evidence of the prosecution witnesses, prompt FIR (Ex.P/1), MLC report (Ex.P/4) and the fact that at the time of incident the accused used the filthy language, this Court is of the opinion that the trial Court was absolutely justified in convicting the appellant under Sections 294 & 323 of IPC.

15. So far as the conviction of the appellant under Section 506 (part II) of IPC is concerned, complainant- Vedram (PW-1) has stated in his evidence that accused threatened to kill him but none of the witnesses have stated anything in their statements with regard to the fact that accused threatened the complainant and they have stated that only over the trivial issue of carrying the passengers in their vehicles the dispute arose.

In order to attract the ingredients of s. 506 IPC the intention of the accused must be to cause alarm to the victim. Mere expression of words, without any intention to cause alarm, would not suffice. To constitute an offence u/s. 506, IPC it must be shown that the person charged actually threatened another with injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested, with the intention to cause alarm.

Thus, in the present case there is no ingredient of criminal intimidation or any acts regarding threatening given by the accused to the complainant is proved by the prosecution therefore, the finding recorded by the trial court regarding the conviction & sentence of appellant under Section 506 (part II) of IPC is liable to be set aside.

16. So far as the sentence of the appellant under Sections 294 & 323 of IPC is concerned, considering the fact that the incident occurred way back in the year 2003, the appellant is facing trial since 2003 and the fact that the appellant has already remained in jail for one day and at present he is on bail, this Court is of the opinion that the ends of justice would be served if he is sentenced to the period already undergone by him and is directed to pay fine of Rs. 4,000/- under

Section 294 of IPC and Rs. 1,000/- under Section 323 of IPC with default stipulation respectively.

17. Resultantly, the appeal is allowed in part. While maintaining the conviction of the appellant under Sections 294 & 323 of IPC, his jail sentence is reduced to the period already undergone by him. He is acquitted of the charges under Section 506 (part II) of the IPC. However, he is directed to pay fine of Rs. 4,000/- and Rs. 1,000/- under Sections 294 & 323 of IPC respectively. In default of payment of fine amount Rs. 4,000/- and Rs. 1,000/- he shall suffer additional simple imprisonment for two months and one month respectively. As per order dated 08.01.2004 of this Court, execution of the jail sentence as well as fine sentence was suspended while granting bail to the appellant.

On such fine amount being deposited by the appellant, Rs. 1,000/- shall be given as compensation to the complainant- Vedram (PW01) under Section 357 of Cr.P.C. after due verification by the trial Court.

The appellant is reported to be on bail, therefore, his bail bond shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)
Judge