

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1094 of 2001**

Smt. Mithilesh Ennani wife of Babulal Ennani, aged 40 years,
resident of Bodhghat Colony, Jagdalpur, District Bastar (C.G.)

---- Appellant**Versus**

State of Chhattisgarh, Through P.S.- A.Ja.K. Jagdalpur District Bastar,
(C.G.)

---- Respondent

For Appellant : Ku. Preeti Jha, Advocate appears as
Amicus Curiae

For Respondent/State : Shri Ishwar Jaiswal, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****31.01.2020**

1. When the case is called for hearing, none appears on behalf of the appellant. Ku. Preeti Jha, Advocate present in the Court is appointed as *Amicus Curiae* to argue the matter on behalf of the appellant in this appeal.
2. This appeal is preferred against the judgment dated 11.10.2001 passed by the Special Judge {Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989}, Jagdalpur, District – Bastar (C.G.) in Sessions Case No.56/2001, wherein the said Court has convicted the Appellant for commission of offence under Sections 294, 506 Part I of the Indian Penal Code, 1860 and under Section 3 (1) (x) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989') and sentenced her to undergo simple imprisonment of one month, rigorous imprisonment for six months and a fine of Rs. 700/- and rigorous imprisonment for six months and a fine of Rs. 800/- with default stipulations.

3. In the present case, the name of the complainant is Tirupati Sena (PW-3). As per version of the prosecution, on 04.01.2000, the son of the Appellant, namely, Lalit climbed the tree and was throwing baby birds from the nest. Complainant Tirupati Sena (PW-3) restrained him from doing so and on the basis of this fact, appellant used obscene words against him, threatened him and intimidated him. Matter was reported and investigated, appellant was charge sheeted and convicted as mentioned above.
4. Learned counsel for the appellant submits that there are material contradictions and omissions in the statement of the Tirupati Sena (PW-3) and other witnesses, but Trial Court has overlooked the same. Charge under Section 3 (1) (x) of the Act, 1989 is not made out because anything was done not on the basis of caste. The Trial Court has not evaluated the evidence properly, therefore finding of the Trial Court is liable to be set aside.
5. On the other hand, the learned counsel for the State supporting

the impugned judgment, submits that finding of the Trial Court is based on proper marshaling of the evidence which is not liable to be interfered with while invoking jurisdiction of this appeal.

6. I have heard counsel for the parties and perused the records of the Court below in which judgment has been passed.
7. Tirupati Sena (PW-3) deposed before the Trial Court that incident took place because son of the appellant climbed the tree and threw baby birds from the nest. From the statement of this witness, it is clear that anything was not happened because of the caste of this witness. It was happened when this witness objected while throwing the baby birds from the nest on the tree, therefore, it is not a case which is based on caste. Charge under Section 3(1)(x) of the Act, 1989 is not established.
8. From the evidence of the prosecution, it is not established that any obscene words were used by the appellant. The essence of the crime under Section 294 of the IPC consists in creating a public nuisance which because of its gravity being of 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, 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 influence.

9. Filthy abuses are not uncommon. It had not more significance than mere platitudinous utterances signifying the enraged state of 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 respondents, thus offence under Section 294 of IPC is not established against the appellant.
10. In the present case, from the evidence of Tirupati Sena (PW-3), it is not established that any word was uttered which comes within the category of obscene words, therefore, charge under Section 294 of IPC is not established.
11. For Commission of offence under Section 506 Part I of IPC, it has to be established that the appellant was determined to execute his threat. In the present case, the charges are leveled only on the basis of words uttered by the appellant. Any words uttered unintentionally is mere fury which has sound but no substance. In absence of determination of executing the treat, charge under Section 506 of IPC is not established.
12. Accordingly, appeal is allowed. Appellant is acquitted of the charges framed against her. Conviction and sentence imposed

by the trial court is hereby set aside. The appellant is reported to be on bail. Her bail bonds shall continue for further period of six months in view of Section 437A of Cr.P.C.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Hem