

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 23-01-2020

Delivered on 20-02-2020

CRA No. 499 of 2005

- Zaheer Ahmed, aged about 25 years s/o. Basheer Ahmed r/o. Railway Colony, Pendra Road, P.S. Gourela, Tahsil Pendra, District Bilaspur, CG.

---- Appellant

Versus

- State of Chhattisgarh through Police Station Gourela, Tahsil Pendra, District Bilaspur (CG).

---- Respondent

 For Appellant : Mr. R.K. Pali, Advocate

For respondent/State : Mr. Aman Kesharwani, P.L.

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

1. This appeal is preferred against the judgment of conviction and order of sentence dated 7-5-2005 passed by the Special Judge/Sessions Judge (Scheduled Castes and Schedule Tribes (Prevention of Atrocities) act, 1989, Bilaspur in Special Criminal Case No. 123 of 2003 wherein the said Court has convicted the appellant for commission of offence under Sections 354, 452, 323, 506 Part II and 294 of the IPC, 1860 and sentenced him to

undergo SI for six months and fine of Rs.200/-, SI for six months and fine of Rs.200/-, SI for three months and fine of Rs.200/- , SI for six months and fine of Rs.200/- and SI for seven days and fine of Rs.200/-, with default stipulations. All the sentences are directed to run concurrently.

2. In the present case, prosecutrix is PW/1. As per prosecution case, on 23-2-2000 at about 5.00 pm appellant and two others entered into the house of prosecutrix. They abused her and outraged her modesty, threatened her to kill and caused voluntarily simple hurt to her. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

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

- i) The trial court has not evaluated the evidence properly because statement of prosecution witnesses is full of contradictions and omissions.
- ii The witnesses have given different stories before the trial court which ought not to have been accepted by the said Court.
- lii) Finding recorded by the trial court is not proper, therefore, same 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. The first question for consideration of this court is whether appellant made preparation before commission of offence. Prosecution witnesses have deposed only regarding incident. No one deposed before the trial court that any preparation was done before commission of offence. From the evidence it is clear that no instrument was in possession of the appellant which can be said that he collected any instrument for commission of offence. From the evidence the only thing which was brought on record is that the appellant slapped the prosecutrix by hand, therefore, preparation on the part of the appellant which is prior stage of commission of offence is not established. In view of the total evidence, charge under Section 452 of IPC is not established.

7. As per version of prosecutrix, appellant uttered words of threatening but he was not in a position to execute his threat or he was determined to execute the same. Appellant was not in possession of any of the instrument, therefore, whatever word

uttered by him is mere fury which has sound but no substance. In absence of determination to execute threat, charge under Section 506 Part II of IPC is not established. Though Saraswati Devi Chandra (PW/1) deposed regarding uttering of some filthy words by the appellant, but the fact remains that for commission of offence under Section 294 of IPC, words should be obscene words

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. In the present case, as the word uttered by the appellant is not appearing to be obscene word, charge under Section 294 of IPC is not established.

10. As per version of prosecutrix (PW/1), Jameela (PW/2) and Kanhaiya Singh (PW/4), it is established that the appellant tried to catch the saree of the prosecutrix and slapped her by hand. Version of this witness is unrebutted during cross examination and nothing could be elicited in favour of defence. One Jayadev Kumar Mandal (DW/1) deposed regarding leave granted to one co-accused Basheer from office on the date of incident. . Version of this witness is not rebutting the version of prosecution witnesses.

11. From the evidence, it is established that the appellant tried to outrage modesty of the prosecutrix and caused simple injury to her. Conviction of the appellant under Sections 323 and 354 of IPC is hereby affirmed. Appellant is acquitted of the charges under Sections 294, 452 and 506 Part II of IPC framed against him. From the record, it appears that the appellant suffered jail term from 7-6-2000 to 11-6-2000 i.e., five days. Jail sentence is not compulsory for offence under Section 323 of IPC. At the time of commission of offence i.e., 23-2-2000, jail sentence was not compulsory for offence under Section 354 of IPC. This court is of the view that no useful purpose would be served if the appellant is against sent to jail and jail sentence is reduced to the period already undergone by him. However, fine amount imposed by the trial court shall remain intact.

12. With the aforesaid modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)

Judge

Raju