

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 472 of 2019

- Shivnarayan Rajwade S/o Budhram Rajwade Aged About 65 Years Caste Rajwar, Occupation, Agriculturist, R/o Village Mendra Khurd, Police Station Gandhinagar, Tahsil Ambikapur, District Surguja Chhattisgarh. (Complainant).

---- Appellant.

Versus

1. Gambhir Sai S/o Bodhram Rajwar Aged About 70 Years R/o Village Mendrakhurd, Police Station And Tahsil Ambikapur, District Surguja Chhattisgarh.
2. Rajesh Rajwar S/o Gambhir Sai Rajwar Aged About 40 Years R/o Village Mendrakhurd, Police Station And Tahsil Ambikapur, District Surguja Chhattisgarh.
3. Rajendra Prasad S/o Gambhir Sai Rajwade Aged About 45 Years R/o Village Mendrakhurd, Police Station And Tahsil Ambikapur, District Surguja Chhattisgarh.
4. Ram Bilas S/o Gambhir Sai Rajwade Aged About 47 Years R/o Village Mendrakhurd, Police Station And Tahsil Ambikapur, District Surguja Chhattisgarh.
5. State of Chhattisgarh Through The District Magistrate, Ambikapur, District Surguja Chhattisgarh.

---- Respondent

ACQA No. 483 of 2019

- Shivnarayan Rajwade S/o Budhram Rajwade Aged About 65 Years Caste- Rajwar, Occupation- Agriculturist, R/o Village- Mendra Khurd, Police Station- Gandhinagar, Tahsil- Ambikapur, District- Surguja, Chhattisgarh.

---- Appellant

Versus

1. Sushil Shukla S/o Late Vinod Kumar Shukla Aged About 51 Years Occupation- Advocate, R/o Ring Road Namnakala, Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh
2. State Of Chhattisgarh Through The District- Magistrate Ambikapur, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Respondents

ACQA No. 485 of 2019

- Shivnarayan Rajwade S/o Budhram Rajwade Aged About 65 Years Caste- Rajwar, Occupation- Agriculturist, R/o Village- Mendra Khurd, Police Station- Gandhinagar, Tahsil- Ambikapur, District- Surguja, Chhattisgarh.

---- Appellant

Versus

1. Rambakas S/o Bodhu Rajwar Aged About 65 Years R/o Village- Mendra, Khurd, Police Station- Ambikapur, District- Surguja, Chhattisgarh.
2. Mana Prasad Rajwar S/o Rambakas Rajwar Aged About 34 Years R/o Village- Mendra, Khurd, Police Station- Ambikapur, District- Surguja, Chhattisgarh.
3. Vidyanand S/o Ghuri Ram Aged About 40 Years R/o Village- Mendra, Khurd, Police Station- Ambikapur, District- Surguja, Chhattisgarh.
4. State Of Chhattisgarh Through The District- Magistrate, Ambikapur, District- Surguja, Chhattisgarh.

---Respondents.

For Appellants : Mr. Syed Majid Ali, Advocate.

For respondent/State : Mrs. Subha Shrivastava, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

Oral Judgment

03-03-2020

1. As the aforesaid three appeals arise out of common judgment dated 22-4-2019, they are heard analogously and are being disposed of by this common judgment.

2. These three acquittal appeals are preferred against the judgment dated 22-4-2019 passed by 3rd Additional Sessions Judge, Ambikapur, CG in Criminal Appeals No. 122 of 2018, 125 of 2018 and 123 of 2018 whereby respondents No. 1 to 4 in Acquittal Appeal No.

472 of 2019, respondents No. 1 to 3 in Acquittal Appeal No. 125 of 2018 and respondent No.1 in Acquittal Appeal No. 123 of 2018 are acquitted of the charge under Section 323 read with Section 149 and 506 Part II of IPC, 1860.

3. In the present cases, date of incident as alleged in the complaint is 22-11-2002 at about 3.30 p.m.. at village Mendra. As per version of the appellant/complainant, all the above respondents with a common intention entered into the field of appellant's bearing Khasra No.334/2 and 334/3 and assaulted the appellant and threatened him to kill. On the report of complainant they were charge-sheeted but acquitted by the said Court. As per version of the appellant, case of the prosecution is proved by the evidence of the appellant and other witnesses but the trial court recorded finding that medical expert was not examined in the present case. As per appellant, for commission of offence under Section 323 of IPC, 1860, examination of the medical expert is not required. No defence witness was examined in the present case to rebut the evidence adduced by the appellant and their names are mentioned in the FIR which is promptly recorded, therefore, finding of the sessions court is liable to be set aside and the said respondents be convicted and sentenced for the said offence.

4. To substantiate the charge, appellant side examined Shiv Narayan (PW/1), Vijay (PW/2), Ramsunder (PW/3) and Bachhuram

(PW/4). As per version of Shiv Narayan (PW/1) (para 2) respondent Sushil Kumar Shukla gave him slap in the field. Vijay (PW/2), Ramsunder (PW/3) and Bachhuram (PW/4) deposed on same line, but no medical expert was examined in support of oral evidence. Version of these witnesses is not supported by medical evidence that actually complainant sustained injury on his cheek. The trial court noted this lacunae in the present case. Offence under Section 323 of IPC is non-cognizable offence. It can be investigated only after permission under clause (ii) of Section 155 of Code of Criminal Procedure, 1973, but from the record, it is not clear that any permission was sought for investigation of offence under Section 323 of IPC which is non-cognizable offence.

5. For commission of offence under Section 506 Part II of IPC, complainant Shiv Narayan (PW/1), Vijay (PW/2) and Bachhuram (PW/4) deposed that threat was given by Sushil Kumar Shukla, but from their evidence it is clear that nothing was done for execution of the threat.

6. The point for consideration of this court is, if nothing is acted in pursuance of threat, whether it falls within mischief of Section 506 Part II of IPC. In view of this court threat should be real one and not just a mere word or mere outburst. In the present case, from the entire evidence, it is clear that nothing is acted in pursuance of threat,

therefore, threat was not real and it was just a mere word. The offence requires substance but the word is mere fury which has sound but no substance. The said Sessions Court while deciding the appeal discussed the evidence elaborately and recorded finding of acquittal. The view taken by the Sessions court is one of the plausible view and it is settled law that if two views are possible, the view which is favourable to the accused should be accepted.

7. After going through the entire record, it is not a case where interference of this court is required with the finding of the trial court. It is also not a case where respondents should be called for full consideration of these appeals.

8. Accordingly, all the three appeals are dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju