

NAFRHIGH COURT OF CHHATTISGARH, BILASPURCRMP No. 2252 of 2019

- State of Chhattisgarh, through- Police Station Bilaigarh, District- Balodabazar (C.G.) ----- **Petitioner**

**Versus**

1. Daulat Sahu S/o Late Shri Faguram Sahu Aged about 38 years,
2. Itwari Sahu S/o Late Guniram Ram Aged about 43 years,
3. Gitesh Kumar Sahu S/o Shyam Lal Sahu Aged about 22 years,
4. Dilchand Sahu S/o Late Shri Jagannath Sahu Aged about 35 years,
5. Anand Ram Sahu S/o Late Netram Sahu Aged about 62 years,
6. Kamlesh Sahu S/o Shyamlal Aged about 33 years,
7. Chandra Prakash Sahu @ Golu S/o Chhabilal Sahu Aged about 23 years,
8. Santosh Sahu S/o Puniram Sahu Aged about 45 years,
9. Shyamlal S/o Puniram Sahu Aged about 45 years,
10. Nem Bai D/o Santosh Sahu Aged about 44 years,
11. Kaushilya Sahu D/o Bhanwarlal Sahu Aged about 55 years

All respondents are R/o Pandripani, Police Station- Bilaigarh, District- Balodabazar-Bhatapara (C.G.)

**----- Respondents**

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For State/Petitioner : Shri Afroj Khan, Panel Lawyer.  
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**Hon'ble Shri Justice Ram Prasanna Sharma****Order on Board****12/02/2020**

1. Heard on I.A. No. 01/2019, which is an application for condonation of delay in filing the petition.
2. On due consideration and for the reasons mentioned in the application, delay of 26 days in filing the instant petition is condoned.

3. Also heard on application for grant of leave to appeal filed under Section 378(3) of the Code of Criminal Procedure, 1973.
4. This petition is preferred against the judgment dated 17<sup>th</sup> May, 2019 passed by 2<sup>nd</sup> Additional Sessions Judge, Balodabazar (C.G.) in Sessions Case No. 07/2017 wherein the said Court acquitted all the respondents for charge under Sections 294, 147, 148, 452, 323 (7 times)/34 and 506 Part-II of the Indian Penal Code (for short "the IPC") 1860.
5. In the present case, only three witnesses namely Shahnaj Bano (PW-3), Taufiq Khan (PW-7) and Abdul Khan (PW-8) have deposed regarding the incident. From their evidence, it is not clear that any obscene words were used by any of the respondent. From their evidence, it is also not clear as to who is the person threatened to any of the complainant. Again, there is no evidence that any preparation was made before commission of offence. The evidence is only regarding commission of offence and the same is not regarding preparation of offence. Preparation is previous stage of the crime, but there is no evidence as to what was the nature of preparation before commission of crime. No one deposed objectively regarding assault to any of the above said witnesses and their statement is bald and general in nature.
6. The trial Court after evaluating the entire evidence recorded finding that evidence adduced by the prosecution is not sufficient to establish offence against the respondent who are 11 in numbers. When a number of persons are prosecuted, the

prosecution is under obligation to prove overtact or common intention or common object of their part, but looking to the general statement, the *mens-rea* on part of any individual respondent is not established. The trial Court recorded finding that evidence of bald in nature is not sufficient to establish guilt of the respondent.

7. From evidence of the prosecution, it is not established that any obscene words were used by the respondents. The essence of the crime under Section 294 of the 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 the 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.
8. Filthy abuses are not uncommon. It had not more significance than mere platitudinous utterances signifying the enraged state of the 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 respondents. In the present case, the words uttered are not clear and cannot be termed as obscene words, therefore, charge under Section 294 of IPC is not established.

9. From the version of the complainant, the respondents uttered some words of threatening but for commission of offence under Section 506 Part-II, it has to be established that person determined to execute his threat. The respondents were not having any weapon to execute his threat, therefore, words uttered mere fury which has sound, but no substance, therefore, charge under Section 506 Part-II of IPC is also not established.
10. Finding of the trial Court is one of the plausible view. It is settled law that if two views are possible, the view which is favourable to the respondents/accused should be accepted, therefore, this Court has no reason to record contrary finding regarding commission of offence. It is not a case where respondents should be called for hearing again of this petition.
11. Accordingly, application for grant of leave to appeal is rejected. Consequently, the petition stands dismissed at motion stage itself.

**Sd/-**

**(Ram Prasanna Sharma)**  
**Judge**