

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Acquittal Appeal No. 144 of 2021**

The State of Chhattisgarh, Through – District Magistrate, Durg (C.G.)

---- Appellant**Versus**

1. Ghanshyam Sinha, S/o.- Ganesh Ram, Aged about -25 years,
2. Roshan Kumar, S/o.- Meluram Sinha, Aged about -20 years, Both are R/o. - Nawagaon, P.S. - Pipariya, District Kawardha (C.G.)

----Respondents

For Appellant	:	Mr. Dinesh Tiwari, Deputy Govt. Advocate.
For Respondents	:	Mr. Sandeep Shrivastava, Advocate.

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****17.09.2021**

(1) Present appeal is directed against the judgment of acquittal dated 03.11.2012 passed by Judicial Magistrate, First Class, Durg in Criminal Case No. 455/2012 acquitting the respondents/accused of the alleged commission of offence punishable under Sections 294 & 507 of the Indian Penal Code.

(2) Case of the prosecution, in brief, is that on 17.11.2010 at about 1.30 p.m., when complainant (Female Constable) Dharmsheela Yadav (PW-2) was discharging her duty to receive phone calls in Police Control Room, Sector 6, Bhilai, some persons were making obscene telephone calls and also abusing her in filthy language on Telephone No. 100 of Police Control Room, from Mobile Nos.

9754342409, 9770167042 & 9755040968, and even after explaining them again and again by her, they did not stop and were calling several times on Telephone No. 100 of Police Control Room. She narrated the entire matter to her the then senior P.S. Chandel, Sub Inspector (P.W. 3), thereafter, mobile numbers were traced through Caller ID, in which, it was found that respondents/accused were the persons, who were making aforesaid telephone calls. Based on this, FIR (Ex.P-3) was lodged by said P.S. Chandel (PW-3) against the respondents/accused under Sections 294 & 507 of IPC. After usual investigation, charge sheet under Sections 294, 507 read with Section 34 of IPC was filed before Judicial Magistrate, First Class, Durg. Charges under Sections 294 & 507 of IPC was framed and the same was read and explained to the respondents/accused, which they denied and their plea was recorded.

(3) In order to prove the guilty of respondents/accused, the prosecution has examined as many as 6 witnesses. Statements of the respondents/accused were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the circumstances appearing against them in the prosecution case also pleaded innocence and false implication in the case.

(4) The trial Magistrate after hearing counsel for the respective parties and considering the material available on record has acquitted the respondents/accused as mentioned in opening paragraph of this order. Hence, this acquittal appeal.

(5) Learned counsel for the appellant/State submits that from the evidence of Constable (Female) Dharmshila Yadav (P.W.2) and Sub-Inspector P.S. Chandel (P.W. 3), it has been proved that the persons, who were talking in obscene words

and abusing filthy language on telephone No. 100 were respondents, which is well supported by FIR Ex. P/3A and call detail Article-1, despite that, learned Court below has acquitted the respondents, therefore, the impugned judgment is erroneous and unsustainable in law.

(6) Per contra, learned counsel for the respondents supports the impugned order.

(7) I have heard learned counsel for the parties, and perused the record of court below and also the impugned judgment.

(8) Constable (Female) Dharmshila Yadav (P.W. 2) has stated in her Court statement that in afternoon of 17-11-2010, some persons were making obscene talks and also using filthy language in Telephone No. 100 of Police Control Room, Sector 6, Bhilai, and even after explaining them again and again by her, they did not stop. She informed the matter to her senior Shri Chandel Sahab (P.W. 3), on the basis of Caller ID, their mobile number was traced. It is revealed that mobile by which aforesaid talks were made was in the name of respondent No. 1 Ghanshyam. Sub Inspector P.S. Chandel (P.W. 3) has supported her statement in his examination-in-chief. He has also stated that he lodged FIR Ex. P-3 in which he has proved his signature. Head Constable Nagendra Kumar (P.W. 5), who wrote the FIR has also supported the version of P.S. Chandel (P.W.3).

(9) A perusal of FIR Ex. P/3A and Court statement of Constable (Female) Dharmshila Yadav (P.W. 2) shows that the persons, who talked in Telephone No. 100 of Police Control Room had made said obscene talks, abusive language many times, they were explained that this is a free phone number and also it is for their service, despite that they did not stop. But, Article-1 shows that from mobile No.

919754342409, only once, that too, at 3.44 pm call was made to telephone No. 100. This fact shows gross contradiction in prosecution story, Court statement of Constable (Female) Dharmshila Yadav (P.W. 2) and Article-1 i.e. call detail. Constable (Female) Dharmshila Yadav is prime witness of the case, in cross-examination, she has stated that on the date of incident, her duty was from 8.00 am to 2.00 pm, but Article-1 shows that on Telephone No. 100 of Police Control Room, not only the call was made only once, that too, at 3.44 pm but at that time, she was not on duty. Thus, there is also material contradiction about time of talking from alleged mobile number and time of her duty. Duty certificate of Constable Dharmshila (P.W. 2) has neither been filed nor has been proved in this case.

(10) Article-1 is said to be call detail, but from where it has been generated and who generated it, has also not been proved in this case. Other witnesses of prosecution are formal witnesses who have stated procedural part of the investigation. As has been stated above, there is material contradictions regarding substantial facts of the case which casts serious doubt on the truthfulness of the case of prosecution. Trial Court has considered the facts in detail, therefore, looking to the impugned judgment and also considering the facts as mentioned above, I do not find any illegality or infirmity in the judgment of the trial Court acquitting the respondents of the offences under Section 294 and 507 of the IPC. Therefore, it does not call for any interference of this Court.

(11) Accordingly, the acquittal appeal fails and is hereby dismissed.

Sd/-
(N.K.Chandravanshi)
Judge

