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e.d.151-

IN THE HIGH COURT OF JUDICATURE: CHHATTISGARH: BILASPUR

MCRC No. 2177 /2001

Cri. Appeal No. _____ /2001

AcgA 141/09

APPLICANT
APPELLANT

: The State of Chhattisgarh.

Versus

RESPONDENTS.

: 1. Battohi Jha, aged about 39 Years
S/o Singhveshwar Jha.

2. ~~Ram~~ Ramesh Jha, aged about
34 years, S/o Singhveshwar Jha.

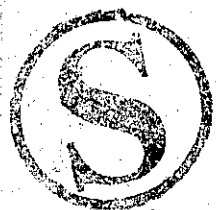
3. Dinesh Jha, aged about
44 years, S/o Singhveshwar Jha.

4. Harishanker Jha, aged
about 25 years, S/o Singhveshwar
Jha,

All R/O: Gangamundapara,
Jagdalpur, Distt.: Baster (C'garh)

31524
Filed on 21-8-2001
by Shri A. S. Manthani
Advocate
R. to DRGJ

APPLICATION FOR GRANT OF LEAVE TO APPEAL UNDER
SECTION 378(3) AND MEMO OF APPEAL UNDER SECTION
378(1) OF THE CODE OF CRIMINAL PROCEDURE, 1973.



22.7.14

HIGH COURT OF CHHATTISGARH

Single Bench: Hon'ble Shri Justice Sanjay K. Agrawal

Acquittal Appeal No. 141 of 2009

APPLICANT
APPELLANT

The State of
Chhattisgarh

versus

RESPONDENTS

Battohi Jha and others.

APPLICATION FOR GRANT OF LEAVE TO APPEAL UNDER SECTION
378(3) AND MEMO OF APPEAL UNDER SECTION 378(1) OF THE CODE
OF CRIMINAL PROCEDURE, 1973

Appearances of the counsel:

Shri R.K. Gupta, Deputy Advocate General for the
State/applicant.

Shri Ravindra Agrawal, counsel for the
respondents.

O R D E R

(Passed on 30th June, 2014)

(1) The present appeal arises out of the judgment and order dated 24.05.2001 passed by Judicial Magistrate First Class, Jagdalpur (Bastar) in Criminal Case No. 02/99 acquitting the respondents/accused of the alleged offences under Sections 341, 294, 323, 506 & 325 of the Indian Penal Code (henceforth 'IPC').

(2) Brief facts of the case are as under:-

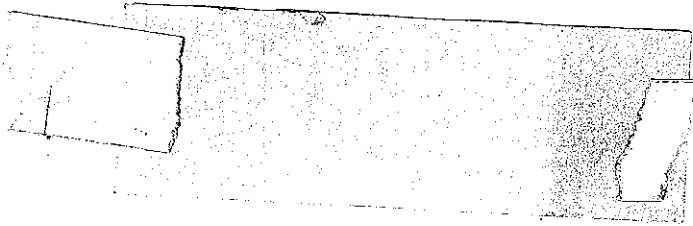
(2.1) The prosecution filed charge sheet against the respondents/accused for the aforesaid offences alleging that on account of some financial dispute on 26.9.1994, respondents/accused abused the complainants

namely Sukhwati (PW-1) & Jairam Dewangan (PW-2), threatened them at the public place and caused greivous hurt, which was medically examined and in which greivous hurt was found established, which is the offence punishable for the aforesaid offences.

(3) Respondents/accused entered into trial, abjured the guilty and examined 9 witnesses and brought on record 9 documents whereas defence neither examined any witness nor exhibited any documents in support of their case.

(4) Mr. R.K. Gupta, learned Deputy Advocate General appearing for the State/appellant would submit that the learned trial Magistrate has committed serious illegality in acquitting the non-applicants of the aforesaid offences as the prosecution has proved the offence beyond reasonable doubt and, therefore, order impugned be set aside and matter be remanded back for re-trial.

(5) Per contra, learned counsel appearing for the respondents/accused would submit that the trial Magistrate is absolutely justified in acquitting the respondents/accused of the aforesaid offences, which does not call for any interference.



(6) I have heard learned counsel appearing for the parties and perused the order impugned with utmost circumspection.

(7) Trial Court, by its order, while acquitting the accused/respondents recorded following findings:-

(i) The fact of using filthy language in public place by the respondents/accused to complainant Sukhwati (PW-1) is not supported by witnesses namely Jairam Dewangan (PW-1), Sukhwati (PW-2) & Sambati (PW-3).

(ii) That, Jairam Dewangan (PW-1), Sukhwati (PW-2), Samwati (PW-3), Raju @ Hanif (PW-4) and Mohna Sahare (PW-5) has not given any specific evidence against each of the accused persons. Likewise, specific evidence has not been given with regard to threatening by respondent/accused persons to the complainant.

(iii) Though complainant Jairam Dewangan (PW-1) has suffered greivous injuries but Dr.Arvind Shukla, who has medically examined him, has not been examined during the course of trial to prove the said fact.

(iv) Prosecution has further failed to prove to which of the accused persons has caused greivous hurt.

(8) Now, the question for consideration is whether the view taken by the learned Magistrate acquitting the respondents/accused is correct.

(9) In order to comprehend the challenge to the attack made to the judgment of acquittal, it would be



profitable to have a quick look over the legal parameters laid down by their Lordships of the Supreme Court for interfering with the judgment of acquittal.

(10) The Supreme Court in case of **Anjanappa v. State of Karnataka**¹ has held that order of acquittal will have to be disturbed if it is perverse. Para 9 of the report states as under:-

"9. It is well settled that an order of acquittal is not to be set aside lightly. If the view taken by the trial court is a reasonably possible view, it is not to be disturbed. If two views are possible and if the view taken by the trial Court is a reasonably possible view, then the appellate court should not disturb it just because it feels that another view of the matter is possible. However, an order of acquittal will have to be disturbed if it is perverse. We have examined the trial court's order of acquittal in light of above principles. We are of the considered opinion that the High Court was justified in setting it aside as it is perverse."

(11) Thus, after having ascertained the legal position with regard to scope of interference in a ^{Appellate} ~~revision~~ with the order of acquittal, Reverting back to the facts of the instant case, the finding of

¹ 2014 Cri. L.J.

learned Magistrate that the prosecution has failed to establish use of filthy language by the applicants/accused specifically appears to be correct as the perusal of the statements of complainants Jairam Dewangan (PW-1) & Sukhbati (PW-2) would show that they have not given evidence of any specific nature against each of the accused persons, which is very much necessary in order to prove the offence under Sections 294 & 506 of the IPC. Likewise, complainant Jairam Dewangan has definitely suffered fracture in his ribs, which is in grievous hurt within the meaning of Section 320 IPC but there is no specific evidence that which of the accused persons out of four accused persons caused grievous hurt followed by the fact the Doctor, who has medically examined him, has not been examined during the course of trial, thus, the prosecution has failed to prove the offence under Sections 341, 294, 323, 506 & 325 of the Indian Penal Code beyond reasonable doubt against the accused persons and, therefore, this Court is of the opinion that there is no manifest legal error in judgment of the acquittal recorded by the trial Magistrate and keeping in view the parameters laid down by the Supreme Court in the aforesaid case, I do not consider it a fit case where this Court should re-appreciate the entire evidence on record or it is not a case where the view taken by the trial

Magistrate is so arbitrary or bears manifest error requiring interference taking into consideration the parameters laid down by their Lordships of the Supreme Court in the above referred cases.

(12) As a fall out and the consequence of the aforesaid discussion, the acquittal appeal is held to be devoid of merit and is, therefore, dismissed.

Sd/-
Sanjay K. Agrawal
Judge