

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 185 of 2011

Reserved on : 03.02.2020

Delivered on : 28.02.2020

1. Mahendra Vaishnav, S/o Dwarika Prasad Vaishnav, aged about 32 years, Occupation- Labour.
2. Bhaktaram @ Bhaktu Ram Sahu, S/o Lilaram Sahu, aged about 25 years.
3. Jageshwar Ram Sahu, aged about 35 years, S/o Lila Ram Sahu, Occupation- Labour.
4. Smt. Savitri Sahu, W/o Lila Ram Sahu, aged about 55 years, Occupation- Housewife.

All are R/o Village- Chhipli, P.S. Magarlod, District- Dhamtari (C.G.)

---- Appellants

Versus

State of Chhattisgarh, through Police Station- Magarlod, District- Dhamtari (C.G.)

Respondent

For Appellants : Mr. D.K. Vishwakarma, Advocate.

For State/respondent : Mrs. Smita Jha, Panel Lawyer.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 08.02.2011 passed by Special Judge [Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act] in Special Session Trial No. 14/2010, wherein the said court convicted all the four

appellants for commission of offence under Sections 436/34, 294, 323/34 & 323/34 of IPC, 1860 and sentenced to undergo R.I. for 4 years and fine of Rs. 1000/-, R.I. for 1 month and fine of Rs. 100/-, R.I. for 2 months and fine of Rs. 200/- & R.I. for 2 months and fine of Rs. 200/- respectively each with further default stipulations. All the sentences to run concurrently.

2. In the present case, name of the victims are Ishwar Nagarchi, Bhikham Nagarchi, Radha Bai & Thanwar Sahu. As per version of the prosecution, on 28.04.2010 at about 09:45 p.m., appellant No. 1- Mahendra Vaishnav caused injury by means of iron rod on left leg of wife of complainant namely Radha Bai whereas appellant No. 2 to 4 assaulted her by hands and fists. Further case of the prosecution is that after the assault, the accused persons abused the complainant- Bhikham Nagarchi and her wife and threatened them to kill. Appellant No. 1- Mahendra Vaishnav & appellant No. 2- Bhaktaram committed mischief by fire in house of Ishwar Nagarchi. The matter was reported and investigated, the appellants were charge-sheeted and after completion of trial, the trial court convicted as mentioned as above.

3. Learned counsel for the appellants submits as under:-

(i) There is material contradiction and omission in statement of Radha Bai (PW-1), Bhikham Nagarchi (PW-3) & Thanwar Sahu (PW-5) regarding commission of the offence.

- (ii) There is previous enmity with family members of the appellants due to election of Sarpanch, but the same is overlooked by the trial court.
 - (iii) Dr. Sharda Thakur (PW-7) conducted medical examination of Radha Bai and found one injury which is simple in nature.
 - (iv) The trial court has not properly considered version of defence witness namely Bodhan Singh (DW-2), therefore, finding of the trial court is not sustainable.
 - (v) The trial court has not evaluated the evidence properly, therefore, the finding arrived at by the trial court is liable to be set aside.
4. On the other hand, learned State counsel submits that the finding arrived at by the trial court is based on proper marshaling of evidence and the same does not warrant any interference of this Court with invoking jurisdiction of the appeal.
 5. I have heard learned counsel for the parties and perused the record.
 6. As per version of Radha Bai (PW-1), Thanwar Sahu (PW-5) knocked the door of her house when she opened the door, said Thanwar Sahu informed that Mahendra Vaishnav assaulted him. At the same time, appellant No. 4- Savitri Sahu and one Rukhmani assaulted this witness, thereafter,

appellant No. 1- Mahendra Vaishnav & appellant No. 2- Bhaktaram assaulted her by iron rod. Version of this witness is supported by version of Bhikham.

7. As per version of Ishwar Nagarchi (PW-4), the appellants instigated for firing his house and thereafter, the accused persons set fire to his house. Dr. Sharda Thakur (PW-7) examined Radha Bai and noticed simple injuries on her thigh. One iron rod was brought before her which is seized in the present case and this witness opined that the injuries could be caused by this iron rod. From evidence of Ishwar Nagarchi (PW-4), it is established that some obscene words were used by the appellants which is unrebutted. All these witnesses have been subjected to searching cross-examination, but nothing could be elicited in favour of defence.
8. From the evidence, it is established that the appellants had common intention and in common intention, they caused simple injuries on body of Radha Bai and Bhikham. Act of the appellants falls within mischief of Sections 323/34 & 323/34 of IPC and their conviction under Sections 323/34 & 323/34 of IPC is hereby affirmed.
9. Though, the witnesses have deposed that some obscene words were uttered by the appellants, but it is not clear as to what were the real words uttered by any of the appellant for commission of offence under Section 294 of IPC. The appellants were charged under Section 294 of IPC, the

essence of the crime under Section 294 of 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 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.

10. Filthy abuses are not uncommon. It had no more significance than mere platitudinous utterances signifying the enraged state of the person's mind. In the case on hand, the words uttered by the appellants is not clear, therefore, the words have no literal significance and it cannot fall in the purview of obscene words. From evidence, it is not established that the offence under Section 294 of IPC is made out. Conviction and sentence passed by the trial court under Section 294 of IPC is set aside. The appellants are acquitted of the charge under Section 294 of IPC.
11. Though, Ishwar Nagarchi (PW-4) deposed before the trial court that the appellants committed mischief by fire, but from his evidence, it is not clear as to who is the real person advanced for mischief by fire and as to what was inflammable article used with intent to destroy house. From the entire evidence, it is not clear that any of the appellant was in

possession of inflammable article at the time of incident and how made fire is also not established, therefore, offence under Section 436 of IPC is not made out against the appellants. Conviction and sentence passed by the trial court under Section 436 of IPC is set aside. The appellants are acquitted of the charge under Section 436 of IPC.

12. Appellant No. 1- Mahendra Vaishnav & appellant No. 2- Bhaktaram have suffered jail sentence for more than 3 months and appellant No. 3- Jageshwar Ram Sahu & appellant No. 4- Savitri Sahu have suffered jail sentence for more than 2 months. Considering the facts and circumstances of the case, this Court is of the opinion that the ends of justice would be met if the appellants are sentenced to the jail sentence of the period already undergone by them for the offence under Sections 323/34 & 323/34 of IPC. Accordingly, their sentence is reduced to the period already undergone by them. However, the fine amount imposed by the trial court shall remain intact.
13. With these modifications, the appeal is partly allowed.

Sd/-
(Ram Prasanna Sharma)
Judge