

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRA No. 362 of 2011**

- Rajendra Gupta S/o. Bineshwar Gupta, R/o. Vill. Bundia, P.S. Bhatgaon, Distt. Surguja C.G.

**---- Appellant****Versus**

- State Of Chhattisgarh, through AJK Police Station Surajpur, District Surguja (CG)

**---- Respondent**


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For Appellant : Shri Aman Kesarwni , Advocate on behalf of  
Shri A.K.Prasad, Advocate  
For Respondent/State : Ms. Priya Sharma, PL

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**Hon'ble Shri Justice Arvind Kumar Verma****Judgment On Board****28/03/2024**

This appeal under Section 374(2) of Cr.P.C. has been preferred by the appellant against the judgment and order dated 29.04.2011 passed by the learned Special Judge, Surguja (Ambikapur) in Sessions Trial No. 25/2009 convicting and sentencing him as under:

Conviction	Sentence
U/s. 3(1)(x) of the SC/ST (Prevention of Atrocities) Act	Undergo RI for six months with fine of Rs. 500/-, in default of fine to further undergo RI for one month
U/s. 452 IPC	Undergo RI for 2 years with payment of fine 500/- in default of fine to further undergo RI for 1 month
U/s. 294 IPC	Undergo RI for three months
U/s. 506 Part II of IPC	Undergo RI for 6 months
All the sentences are ordered to run concurrently.	

2. Case of the prosecution put-forth by the complainant herein is that

at the relevant time he was the Sarpanch of Village Bundiya and he used to run the fair price shop and the food grains were distributed in the village as per the instructions. On the date of incident, i.e. 5.10.2018 at about 7.00 p.m. the appellant entered the house of the complainant and started hurling filthy abuses by the name of his caste to handover the fair price shop to him. Apart from this, the accused/appellant also threatened the complainant of life as a result of which he underwent humiliation and mental agony. At that time, son of the complainant who was present there, caught the appellant and moved out. The incident was witnessed by Rajkumar. Written report Ex.P-1 was lodged at AJAK against the appellant under Sections 294,506 and 452 IPC and Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act. Thereafter on 21.12.2008, the appellant was arrested and arrest memo Ex.P-5 was prepared. After completion of investigation, the appellants were charge-sheeted for the offence punishable under Sections 294, 506 and 452 IPC and Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act before the jurisdictional criminal Court and the case was committed to the trial Court for hearing and disposal in accordance with law, in which the appellant/accused abjured his guilt and entered into defence by stating that he has not committed the offence.

3. In order to bring home the offence, prosecution has examined as many as 4 witnesses. This apart, two defence witnesses have been examined.

4. The trial Court, after appreciation of oral and documentary evidence on record, convicted and sentenced the appellant as above against which the present appeal has been preferred.

5. Learned counsel for the accused/appellant submits that learned Court below has committed an error of law in passing the judgment impugned holding the accused/appellant guilty under the Special Act. He further submits that the prosecution has failed to prove its case against the appellant. He submits that Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act is not attracted against him but yet the Court below has not considered this lacuna on the part of the prosecution and erroneously held him guilty under the Special Act apart from certain sections of the Indian Penal Code. He also submits that the intention on the part of the accused/appellant to humiliate the complainant knowing him to be a member of Scheduled Tribe community has not been established by the prosecution and therefore also his conviction is bad under the law. Hence, the appellants have been falsely implicated.

6. Per contra, learned counsel appearing for the respondent/State argued the case in support of the impugned order of the Special court. He submits that the contents of the FIR are corroborated by the statement of the witness (Raj Kumar-PW-2) recorded during investigation making out the basic ingredients of the offence and there was no illegality in the order passed by the trial court.

7. Heard counsel for the parties and perused the material available on record.

8. Complainant Roop Sai (PW-1) has stated that apart from being Gond by caste, falling in the Scheduled Tribe category, he was the Sarpanch of village Bundiya as well. He has stated that on the date of incident at about 7.00 p.m., the appellant came to his house and started

hurling filthy abuses in the name of caste. He also told him to handover the fair price shop/society to him and threatened him of life. At that point of time, his son intervened and he ran away from there. He has further deposed that on several occasions, he had created nuisance by hurling abuses. He has made a written report Ex.P-1 at AJAK, Surajpur. Rajkumar (PW-2) who at the relevant time was present on the spot has also reiterated similar statement to that of the complainant .

9. According to this witness, the appellant had also threatened the complainant of life. Though the caste certificate Ex.P-2A dated 12.01.2009 issued by the competent authority is there on record which shows that the accused/appellant belongs to Scheduled Tribe category. Apart from this, the complainant has also stated his caste to be Gond falling in the Scheduled Tribe category. Most importantly, the accused/appellant in his statement recorded under Section 313 of Cr.P.C. has also admitted that the complainant was Gond by caste and a member of Scheduled Tribe community as such. Defence witnesses namely Dilip Jaiswal (DW-1) and Chetan Prasad (DW-2) however, have stated that the accused/appellant has been implicated by the complainant in a false case.

10. After going through the statement of the witnesses, it is found that firstly, from the reading of the complaint and the charge framed, the offence under Section 452 of IPC is not made out against the appellant as he did not trespass into the house with intention to assault /or cause hurt to the complainant nor was armed with any weapon to assault or causing hurt and the charge framed, if at all, then offence under Section 451 IPC is made out which provides for commission of house trespass in

order to commit any offence punishable with imprisonment. From the reading of the allegations made by the appellant, it is evident that the appellant had only entered the house hurled abuses and not for causing any physical hurt or assault or wrongful restraint. Section 452 IPC reads as under:

“House-trespass after preparation for hurt, assault, or wrongful restraint: This section deals with house-trespass after preparation for hurt, assault, or wrongful restraint. It pertains to cases where a person trespasses into a house or any other place with the intention of causing hurt, assault, or wrongful restraint to any person. The offender can be imprisoned for up to seven years, along with a possible fine. This section underscores the significance of safeguarding individuals' safety and security within their premises by addressing not only the act of trespass but also the preparatory stages for causing harm, assault, or wrongful restraint.

These sections collectively define and penalize various forms of criminal trespass, taking into account different circumstances, intentions, and potential offenses that may result from such trespasses.”

11. There is no evidence on record to prove that the appellant was prepared to cause hurt to any person and thereafter committed house trespass. It has only come in evidence that the appellant has hurled abuses and have used the surname Uraon and he was not intended to defame by his caste and left the place.

12. Whereas Section 451 of the Indian Penal Code is defined as under:

“Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be

committed is theft, the term of the imprisonment may be extended to seven years.”

13. Secondly, the conviction of the appellant under Sections 294 and 506-Part II of the IPC is concerned, Section 294 of the IPC as a whole reads thus:

"294. Obscene acts and songs - Whoever, to the annoyance of others -  
 (a) does any obscene act in any public place, or  
 (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

14. The object in enacting this provision (**Section 294** of the CrPC) is to shorten the proceedings. It provides the mode or manner in which the documents relied upon by the prosecution and defence can be proved without any formal proof thereof. The proviso, however, gives discretion to the court to call for the proof of the signature on the documents. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294 IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. In the present case, the appellant has entered the house of the complainant and hurled abuses and it is not a public place to the annoyance of others and therefore the offence under Section 294 IPC is also not made out against the appellant. The mere platitudinous utterances signifying the enraged

state of person's mind would not be sufficient to attract Section 294 of IPC.

Section 506 of IPC reads as under:

"506. Punishment for criminal intimidation. - Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

15. Allegations in the complaint against the appellant is that he hurled filthy abuses and also threatened the complainant of life. Even if, for the sake of argument the above allegations are taken as true even then the aforesaid allegations on its face value does not satisfy the necessary ingredients of section 506 of IPC. Section 506 of IPC talks about the criminal intimidation.

16. In **Manik Taneja Vs. State of Karnataka, reported in (2015) 7 SCC 423**, Hon'ble Supreme Court after noticing Section 506, which defines the criminal intimidation observed as under:

"11. \*\*\*\*\*A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act

which he is not legally bound to do or omit to do an act which he is legally entitled to do.”

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of “criminal intimidation”. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.”

17. The Hon’ble Apex Court held that the allegations that accused has abused does not satisfy the ingredients of Section 506 of IPC. In the case on hand, the allegation against the appellant is that he hurled abuses and threatened the complainant of life. Even if for the sake of argument the entire allegations are taken to be correct, the necessary ingredients for an offence under Section 506 Part II are not made out.

18. For proving an offence under Section 506 of IPC prosecution is required to prove:

- (i) that the accused threatened some person.
- (ii) that such threats consisted of some injury to his person, reputation or property, or to the person, reputation or property of someone in



whom he was interested.

(iii) that he did so with intent to cause alarm to that person, or to cause that person to do any act which he was not legally bound to do or omit to do an act which he is legally entitled to do as a means of avoiding the execution of such threat.”

19. A plain reading of the allegations does not satisfy the ingredients of Section 506 Part II of IPC because an offence of criminal intimidation can be made out only if it is established that the accused had an intention to cause an alarm to the complainant. Mere threats given to by the accused not with an intention to cause alarm to the complainant, but with a view to deterring him would not constitute an offence of criminal intimidation.

20. In the light of above discussion, I am of the considered view that necessary ingredients for an offence under Section 294 and 506-II of IPC are not made out from the contents of complaint made by the complainant. Even though all the ingredients which are necessary for constituting offences under Sections 294 and 506-II of IPC are clearly missing. The trial court convicted the appellant based on the corroborated evidence which is against the fundamental criminal jurisprudence.

21. Lastly, the learned trial court has also failed to prove the fact that no case is made out against the appellant under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act. The question to be decided is whether the conviction of appellant under 3 (1)(x) of the Special Act is justified or not?

22. Section 3(2)(v) of the SC and ST (Prevention of Atrocities) Act, 1989 as amended as 3(1)(r) by Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) amendment Ordinance 2014 with effect from 4-3-2014 reads as under:

“3. Punishments for offences of atrocities –(1)  
Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe-

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view” shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine.

23. Thus, to bring home an offence punishable under Section 3 (1)(r) of the Act, 1989 the prosecution has to prove the following ingredients.

“i) That the accused was not a member of Scheduled Caste or Scheduled Tribe;

ii) That the complainant was intentionally insulted or intimidate by the accused.

iii) that intentional insult or intimidation was “with intent to humiliate” such member;

iv) that insult or intimidation with an intent to humiliate must be in a place within “public view”.

24. The entire statement of the complainant goes to show that there is no proof for the ‘intent to humiliate’ or intentionally insulted’ After due consideration and close examination of the witnesses facts and circumstances and evidence, in the opinion of this Court, the prosecution has failed to prove the essential ingredients against the appellant under Section 3(1)(10) of the Act, hence the conviction requires no interference. The Offence u/S 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 being committed inside the house, which is not public place or in any place within public view, the accused is acquitted of the charge against him under the aforesaid section.

25. Thus from the material available on record and the evidence of the witnesses and the statement of accused/appellant under Section 313 Cr.P.C., this Court is of the considered opinion that on the date of incident the accused/appellant hurled filthy abuses but not with an intention to insult or humiliate the complainant. With regard to abusing in the name of caste is concerned, the appellant has abused him with his surname and not by caste therefore offence under Section 3(1)(x) of the Special Act is not made out against the appellant.

26. It has come on record that the appellant entered the house of the complainant however he was not having any deadly weapon at the time entering the house of the complainant therefore, in the opinion of this Court, the learned trial Court has committed illegality in recording the conviction of the appellant under Section 452 of IPC instead of Section 451 IPC. Thus, his conviction under Section 452 of IPC is altered to 451 of IPC. He is sentenced to the period already undergone by him. However, he is directed to pay fine of Rs. 500/- on each count, failing which he shall suffer additional RI for two months. Accordingly, the jail sentence imposed by the court below under Section Section 452 of I.P.C is set aside and instead thereof a sentence of simple imprisonment for one month is imposed under Section 451 of I.P.C.

27. It is stated that the appellant had remained in jail for about 15 days and considering that at the time of incident, the appellant was aged about 38 years, 16 years have rolled by then and now the appellant may be aged about 56 years, he has been in custody for about 15 days, now he is having his family responsibilities, ends of justice would be served if the sentence imposed upon him is reduced to the period already undergone

by him.

28. In sum and substance, conviction of accused/appellant under Sections 294 and 506-Part II IPC and Section 3(1)(x) of the Special Act are set aside and he is acquitted of the said charges. However, his conviction under Section 452 is altered to that under Section 451 of IPC and it is maintained. So far as the substantive jail sentence imposed on him is concerned, it is reduced to the period already undergone by him with fine of Rs. 500/- on each count failing which he shall suffer additional RI for two months. Since the appellant is already on bail, his bail bonds stand discharged.

29. Appeal is thus allowed in part.

Sd/-  
(Arvind Kumar Verma)  
Judge