IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 26th OF JULY, 2023

CRIMINAL APPEAL No. 4239 of 2022

BETWEEN:-

PREMCHAND S/O JAGANNATH JI BALODIYA, AGED ABOUT 53 YEARS, OCCUPATION: AGRICULTURE BHICHOLI MARDANA (MADHYA PRADESH)

.....APPELLANT

(NONE)

AND

1. **THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION KHUDEL (MADHYA PRADESH)**
2. **DHARMENDRA S/O JAGDISH SHARMA OCCUPATION: AGRICULTURE GRAM DUDHIYA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI GAURAV RAWAT, GOVERNMENT ADVOCATE)

(BY SHRI RAJENDRA KUMAR TRIVEDI, ADVOCATE FOR RESPONDENT NO. 2)

This appeal coming on for orders this day, the court passed the following:

ORDER

The present appeal has been filed against the judgment of conviction and sentence dated 08.02.2022 passed by the learned Special Judge, SC/ST, Indore in Special Case No. 77/2019, whereby the respondent No. 2 has been convicted under Section 324 of I.P.C. and Section 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred as 'the Act') and sentenced to undergo 1 year S.I. with fine of Rs.2,000/- and usual default stipulation. Vide this judgment, respondent No. 2 has also been acquitted by the learned trial Court under Section 506 (Part-II) of I.P.C. and Section 3(1)(r) of the Act and also under Section 294 of I.P.C. and Section 3(1)(s) of the Act and Section 25(1-B)(b) of Arms Act.

2. Being aggrieved by the aforesaid acquittal of respondent No. 2 in impugned judgment, appellant-Premchand has filed this appeal on the grounds that there is sufficient evidence against the respondent No. 2, but the learned trial Court has acquitted the respondent No.2. The appellant-Premchand (PW-1) and his witnesses Dinesh Chouhan (PW-4) and Nirmala Balodiya (PW-6) have supported the prosecution case and deposed that the respondent No. 2 has assaulted the appellant with sword and insulted the appellant by scolding and used indecent words regarding caste. Therefore, the judgment passed by the trial Court is perverse and requires to be rectified.

3. Shri Rajendra Kumar Trivedi, learned counsel for the respondent No. 2, on the contrary has opposed the contents of appellant and submitted that the order passed by learned trial Court regarding acquittal, is in accordance with law and procedure. The

respondent No. 2 has already suffered one year and four months of custody during trial, hence, there is no need to get him convicted in each offence.

4. Learned Government Advocate for the respondent/State has also controverted the contentions of appellant and born out the finding of the learned trial Court.

5. Before considering the points raised by the appellant in this appeal, it is worth mentioning that the appellant has not appeared on the last date of hearing and as per order-sheet dated 19.12.2022, this Court has directed to the appellant that no further adjournment shall be given in the matter and this appeal shall be heard after hearing only respondent. In spite of directions issued by the Court, the appellant did not appear before the Court. Hence, this appeal is decided on the basis of contentions raised in the appeal memo. In this regard, it is well settled law of principle that a criminal appeal should be decided on merits based on contentions mentioned in appeal memo. On this aspect, the law laid down by the Apex Court in the case of ***Shyam Deo Pandey and Others Vs. The State of Bihar*** reported in ***1971(1), SCC 855*** *and* ***Parasuram Patel and Another Vs. State of Orissa*** reported in ***(1994) 4 SCC 664*** worth referring to the context of this case.

6. In view of the aforesaid proposition and considering the contentions raised in appeal memo, the question of consideration is that as to whether the learned trial Court has erred in acquitting the respondent No. 2 or not ?

7. In view of the arguments advanced by the counsel for the

parties, I have gone through the record and the judgment passed by the learned trial Court. So far as the allegation regarding hurling for indecent words used by accused to Premchand (PW-1) offence punishable under Section 294 regarding use of abusing word in the name of mother and sister, is concerned, the prosecution witnesses Dinesh Chouhan (PW-3), Subhash Chouhan (PW-2) and Nirmala Balodiya (PW-6) have not stated anything in this regard.

8. In terms of the charges of offence punishable under Section 294 of IPC, it is well settled that these type of abuses are uttered in general parlance in altercations between rustic people. In this regard, the principle laid down by the Hon'ble High Court of M.P. in ***Dhal Singh v. State of M.P. 1957 MPLJ -21*** Note- 62, is relevant to refer here:-

> ***"That in the class of society to which the parties belonged the abuses had no more significance than mere platitudinous utterances signifying the enraged state of the persons mind. As the accused were villagers and filthy abuses were not uncommon among villagers and in the strata of society to which they belonged, the sting was taken out of the words and they could not be characterised as obscene within the meaning of Section 294 of the IPC. Annoyance is the gist of the offence under Section 294 and in the absence of positive proof of annoyance, there could be no offence under Section 294, IPC."***

9. In view of the above case law, it is envisaged that annoyance is main substance of the offence punishable u/s 294 IPC. The above preposition has been followed by Hon'ble High Court of M.P. in

Roshanlal v. State of M.P. 1966 MPLJ-87 Note-172 and ***Kamal Singh v. State of M.P. 2002 (4) MPHT-7***.

10. Virtually, in colloquial language such type of abuses are often used and therefore, they cannot be accepted in their literal sense. In ***Om Prakash Vs. State of M.P. 1989 MPLJ 657***, it has been held by Hon'ble High Court that no literal significance can be attached to the abuses. They only delineate the enraged state of mind. Further, in ***Sharad Dave and another Vs. Mahesh Gupta and others, 2005 LawSuit (MP) 442***, Hon'ble High Court of M.P. endorsing the aforesaid ratio *decidendi adumbrated* as under:-

> ***"Mere platitudinous utterances signifying the enraged state of the person's mind would not be sufficient to attract the application of the provisions of section 294, of the Indian Penal Code. Thus mere 'vulgar abuses' do not constitute offence under section 294 of the Indian Penal Code."***

11. In light of the aforesaid propositions, in the case at hand, since no prosecution witness deposed any thing about causing annoyance before the Court, the prosecution, therefore, has failed to prove that accused committed obscene act by abusing complainant, which annoyed others. In the upshot, accused persons deserve to be acquitted from the charge of the offence u/s 294 of IPC as well as Section 3(1)(s) of the Act.

12. Now, turning to the next limb of the case, the finding of the trial Court regarding acquittal of accused persons from the charges punishable u/s 506 of I.P.C. and Section 3(1)(r) of the Act, is considered, it is well based on available evidence placed before the

trial Court, and there is no substantial and compelling reasons available for setting aside the order of acquittal. In order to bring home an offence of criminal intimidation to cause death punishable under section 506 (Part-II) and Section 3(1)(r) of the Act, the prosecution requires to prove that accused threatened the victim to cause his death or grievous hurt to a person or another in whom, he is specially interested. After considering the definition of criminal intimidation u/s 506 of IPC, Hon'ble Apex Court in ***Manik Taneja and another Vs. State of Karnatka and another 2015 LawSuit (SC) 52*** ordained as under:

> ***"14. 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."***

13. In view of the aforesaid propositions, the threatening is most important ingredient of criminal intimidation. If the threat be to cause death or grievous hurt, the offence would be punishable under Section 506 (Part-II) of I.P.C. and Section 3(1)(r) of the Act. In this case the sole eye witness Premchand (PW-1) has deposed in his examination in chief that accused Dharmendra told him that he has been rescued but if he came to this field he will be killed. This intimidation is conditional, so it doesn't come under the purview of

offence punishable under Section 506(Part-II) of I.P.C. and Section 3(1)(r) of the Act, hence, the finding of learned trial Court regarding acquittal under these sections is also found inviolable in the eyes of law and fact.

14. So far as the offence punishable under Section 25(1B)(b) is concerned, as per prosecution case, a sword was seized from the possession of respondent-Dharmendra, but on this aspect, independent witness Mahesh Choudhary (PW-8) has not supported the prosecution case. Rupesh Dubey, Investigating Officer (PW-10) has certainly supported the prosecution case but since no independent witness has supported the prosecution case regarding seizure of the sword, hence, no interference can be made in finding of order of the acquittal of learned trial Court for the offence under Section 25(1B)(b) of Arms Act.

15. It is pertinent to mention here that the offence under Section 25(1B)(b) is punishable with minimum sentence, hence, the standard of evidence is required to be more convincing. In this context, the principle laid down by the Hon'ble Supreme Court rendered in ***Ajmer Singh Vs. State of Haryana (2010) 3 SCC 746*** is also condign to quote here :-

> ***"16.....It is a well-settled principle of the criminal jurisprudence that more stringent the punishment, the more heavy is the burden upon the prosecution to prove the offence.....”***

16. In view of the aforesaid ratio, the finding of the learned trial Court regarding acquittal of appellant under Section 25(1B)(b) is also not warranting any interference. That part, when two views are

possible, in this regard, it is well settled that if trial court has passed the judgment of acquittal in favour of accused persons on the ground of proper appreciation of evidence, hence, there is no requirement of interference by the appellate court, even when appellate court has another conclusion. It is also well established proposition of law that when two views was possible, then view taken by learned trial Court, be accepted. In the case of ***M.S.Narayan Menon vs State of Kerala, (2006) 6 SCC 39***, Hon'ble Apex Court has held that where two views possible, appellate court should not interfere with finding of acquittal recorded by court below. Likewise, in the citation of ***Budh Singh v. State of U.P. (2006) 9 SCC 731***, it was again held by Hon'ble Supreme Court that the view of the trial court having regard to the fact and circumstances of the case was a possible view, which should not have been interfered with by the High Court.

17. Also, the principle laid down by Hon'ble Supreme Court in another case law of ***Gopal Singh and others vs State of M.P., (2010) 6 SCC 407***, in same context, is also worth referable as under;-

> ***"It is now well settled that if the trial court's judgment is well based on the evidence and the conclusion drawn in favour of the accused was possible thereof, the High Court would not be justified in interfering on the premise that a different view could also be taken and though the High Court was entitled to reappraise the evidence there should be substantial and compelling reasons for setting aside an acquittal order and making one of conviction."***

18. In light of aforesaid ratio decided and so also considering that

the testimony of complainant as well as all witnesses have not supported the prosecution case and nothing came on record about causing annoyance and criminal intimidation before the Court, hence, acquittal of the respondent No. 2 under Section 294 of I.P.C., Section 3(1)(s) of the Act and Section 506 (Part-II) of I.P.C. and also under Section 3(1)(r) of the Act. is entitled to be affirmed. Likewise, the finding regarding acquittal under Section 25(1B)(b) of Arms Act, also appears to be just and proper, therefore, impugned judgment does not warrant any interference.

19. In view of the aforesaid findings, this Criminal Appeal No. 4239/2022 is dismissed and impugned order passed by the trial Court is hereby affirmed.

(PREM NARAYAN SINGH)
JUDGE

Vindesh