2026:CGHC:10682

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 28.01.2026

Delivered on 02.03.2026

ACQA No. 180 of 2020

Bhujrang Sai Paikara, S/o. Late Shri Bidhnath Sai Paikra, aged about 45 years, r/o. Ward No. 10, Saraipali, PS & Tashil Saraipali, District Mahasamund. **---- Appellant**

Versus

1. State of Chhattisgarh through the Station House Officer, Police Station Saraipali, District Mahasamund (CG).
2. Rajkumar Agrawal S/o Late Shri Prahalad Agrawal, aged about 57 years died and deleted vide court order dated 4-12-2025.
3. Saurabh Agrawal, S/o Shri Rajkumar Agrawal, aged about 26 years.

   Both respondents No.2 & 3 are residents of Ward No.10, Saraipali, Police Station and Tehsil Saraipali, District Mahasamund (CG). **---- Respondents**

(Cause Title taken from Case Information System)

For Appellant	:	Mr. Ayush Lall, Advocate.
For Respondent No.1/State	:	Mr. Suresh Tandon, Panel Lawyer.
For Respondent No.3.	:	Mr. Rajendra Patel, Advocate.

(SB: Hon'ble Mr. Justice Narendra Kumar Vyas)

(CAV Order)

1. The appellant has preferred this Acquittal Appeal under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 20-2-2020 (Annexure A/1) passed by the learned Special Judge

under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Mahasamund, District Mahasamund in Special (Atrocities) Sessions Trial No. H-11/2015 whereby the learned trial Court has acquitted the accused/respondents No.2 and 3 for commission of offence under Sections 294, 452, 388/34 of IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “the Act, 1989”).

2. Case of the prosecution, in brief, is that on 27.07.2014 complainant/appellant made a written complaint (Ex. P/4) before Police Station Saraipali, District Mahasamund against respondents No.2 and 3 alleging that the complainant/appellant is working as Sub Engineer in Public Works Department and resident of village Deori, District Jashpur and his wife is also working as Teacher Panchayat. Out of their earning they have purchased 23 acres of land situated at Salhepali through registered sale deed 11-11-2011 from one Jagbandhu Bhoi, resident of village Belmundi. It is also alleged that after notice of the fact that the land has been purchased by him, respondents No.2- Raj Kumar Agrawal and respondent No. 3- Saurabh Agrawal forcibly entered into the house of the complainant, started threatening, asking them about source of funds and extorted Rs.5,00,000/- from him otherwise, news will be published in the newspaper against them. They have also threatened that the sale deed would be cancelled.

3. It is also the case of the complainant that the complainant & his wife informed the accused/respondents No.2 and 3 that they have purchased the land from their own earnings and they have not done any illegal work, thereafter, respondent No.2 -Rajkumar Agrawal abused him by caste and thereafter he left the house. The abuses

uttered by respondent No.2- Rajkumar were heard by one Lalit Kumar and other local residents. It has also been contended that son of Raj Kumar Agrawal namely Soram Agrawal (Goyal) also published the news against the complainant and started torturing them, therefore, prayed for taking suitable action against them. On the basis of the complaint dated 27.07.2014 (Ex.P/4), FIR has been registered against respondents No. 2 & 3 for commission of offence under Sections 294, 452/34 along with Section 3 (1)(x) of the Act, 1989 reiterating the stand contained in the complaint. The prosecution after usual investigation has submitted the charge-sheet before Judicial Magistrate First Class, Mahasamund on 21.09.2015 for commission of offence under Sections 294, 452, 385, 506, 34 of IPC and Section 3 (1)(x) of the Act, 1989 who has committed the case for trial to the Sessions Judge, Mahasamund on 19.09.2015.

4. In order to bring home the guilt of accused/respondents, the prosecution has examined as many as 10 witnesses namely- Sanjay Kumar Das (PW/1), Lalit Kumar Barmate (PW/2), Arvind Gilhare (PW/3), complainant Bhurang Sai Paikra (PW/4), Rupvati Paikra (PW/5), Keshari Nandan (PW/6), G. Suresh Kumar Samant (PW/7), Kartik Chand (PW/8), Manoj Kumar Baank (PW/9) & S.S. Paikra (PW/10) and exhibited documents namely statement of witness Sanjay Das (Ex.P/1), property seizure memo (Ex.P/2 & 3), Written complaint to Thana Saraipali (Ex.P/4), FIR (Ex.P/5), Patwari Map (ExP/6), Crime details form (Ex.P/7), Patwari Panchnama (Ex.P/8), statement of witness Manoj Kumar Baank (Ex.P/9), officer order of CEO National Highway, Raipur (Article A-1), order of Zila Panchayat, Mahasamund (Article A/2) & certified copy of permanent caste certificate (Article A/3).

5. Statements of accused/respondents have been recorded under Section 313 Cr.P.C., in which they denied the allegations leveled against them and pleaded innocence and falsely implication. It has also been contended that they have published the news as the complainant and his wife have purchased the property illegally. Accused/respondents No.2 and 3 in order to prove their innocence, have exhibited documents namely statement of Bhujrang Sai (Ex.D/1), statement of Lalit Kumar Barmarte (Ex.D-1-A), statement of Arvind Gilhare (Ex.D/2), statement of Smt. Roopmati Painkra (Ex.D/4), Patrika newspaper dated 1-7-2014 (Ex.D/5), Patrika newspaper Raipur dated 3-7-2014 (Ex.D/6) Patrika newspaper dated 7-7-2014 (Ex.D/7), information under RTI (Ex.D/8 to 10), copy of the application (Ex.D/11), postal receipt (Ex.D/12), covering letter of office of Collector, Mahasamund (Ex.D/13), letter of office of Collector, Mahasamundd (Ex.D/14), information regarding disaster management (Ex.D/15 & 16), information under RTI to SDO (Ex.D/17), final report (Ex.D/18), affidavit of Jagbandhu Bhoi (Ex.D/19), letter to Deputy Registrar, Saraipali, Mahasamund (Ex.D/20), reply of Deputy Registrar Saraipali (Ex.D/21). Letter to SDO, Revenue, Saraipali (Ex.D/22) and reply of SDO Revenue, Saraipali (Ex.D/23), identification card of Saurabh Goyal (Ex.D/24).

6. Learned trial Court after appreciating the evidence and material available on record vide its judgment dated 20.02.2020 has held that the prosecution has failed to prove the case against accused/respondents and thereby acquitted them for the offences as mentioned in opening paragraph of the judgment. Being aggrieved and dissatisfied with the aforesaid judgment of acquittal passed by the

learned trial Court, the appellant/complainant has filed this Acquittal Appeal challenging the same. During pendency of the appeal, accused respondent No. 2-Raj Kumar Agrawal died, therefore, his name has been deleted from the array of cause title of the appeal vide order dated 4-12-2025.

7. Learned counsel for the appellant would submit that from the evidence and material on record, the offence under Section 385 of IPC is clearly made out still the trial Court has erred in acquitting them on a perverse finding which is liable to be set aside by this Court. He would further submit that respondents No.2 & 3 put the complainant in fear of injury to commit extortion as they have threatened that if the amount of Rs.5,00,000/- is not paid to them then news against the complainant will be published in the newspaper, which is nothing but an extortion, as such the provisions of Section 385 of IPC have been proved by the prosecution still the trial Court erred in acquitting them. He would further submit that the accused/respondents No. 2 & 3 in pre-determined mind has forcibly entered into the house of the complainant without his permission, therefore, the act committed by the accused will definitely fall within the definition of criminal trespass under Section 452 of the IPC for preparation of causing hurt to any person.

8. He would further submit that the witness- Keshari Nandan (PW/6) has seen the incident whereby the accused have abused them by caste, therefore, it cannot be said that there is no material on record to record such finding that the accused respondents have not committed the aforesaid offence under the Act, 1989. He would further submit that the appellant has submitted the caste certificate which was issued by the competent authority ie., Sub Divisional Officer, Saraipali which is legal

and in accordance with law laid down by Hon'ble the Supreme Court in case of **Kumari Madhuri Patil Vs. Addl. Commissioner [(1994) 6 SCC 241],** as such it should not be ignored by the learned trial Court while acquitting the accused for the offence under the Act, 1989 as despite knowing the fact that the appellant belongs to ST community, the accused have abused him. Thus, he would submit that the finding recorded by the learned trial Court suffers from perversity or illegality and same is liable to be set aside and the accused be punished for the offence which they have committed.

9. On the other hand, learned counsel for respondents No. 2 & 3 opposing the submission made by learned counsel for the appellant would submit that presence of Lalit Barmate (PW/2) and Arvind Gilhare (PW/3) at the time of incident is doubtful as has rightly been observed by the learned Special Judge in paragraph 38 of the judgment which cannot be found fault, therefore, finding of the learned trial Court is legal and justified. He would further submit that S.S. Paikra (PW/10) Investigating Officer is relative of the complainant as admitted by this witness itself, therefore, the investigation carried out by him is doubtful. He would further submit that there is delay of 10 days in lodging the FIR and no proper explanation has been given by the appellant which is fatal for the case of the prosecution as it clearly spells out that the FIR has been lodged with intention to harass the accused. He would further submit that the offence under Section 3 (1)(x) of the Act, 1989 cannot be held to be committed by the respondents No.2 & 3 as the alleged incident took place in the house of the complainant which is not in the public view, therefore, the provisions of Section 3(1)(x) of the Act, 1989 are not attracted at all. It has also been contended that the prosecution is unable to prove beyond reasonable doubt that the

alleged incident has been taken place knowing the fact that the complainant belongs to Scheduled Tribe community.

10. He would further submit that the learned trial Court on proper appreciation of evidence, material on record, has recorded its finding that the ingredients of offence under the Act, 1989 have not been proved by the prosecution, thus, the acquittal of the accused is not liable to be interfered with by this Court. Lastly, he would submit that as per well settled provisions of law that once order of acquittal has been passed, it should not be normally interfered unless the findings are so perverse and even if two views are possible in which one of the views is favourable to the accused, the same should not be interfered. He would further submit that there are no such circumstances available on record which entail this Court to exercise its power under Section 386 of the Cr.P.C. to interfere in the well reasoned finding recorded by the trial Court while passing the judgment of acquittal in favour of the accused. Thus, he would pray for dismissal of the appeal.

11. In support of his arguments, he has relied upon the decisions of this Court in the case of **Satrughan Singh Sahu Vs. State of Chhattisgarh and others, [2022 (1) CGLJ 132] and the judgments of Hon'ble Supreme Court in Sunil Kumar Sambhudayal Gupta Vs. State of Maharashtra [(2010) 13 SCC 657], Rathinam Vs. State of Tamil Nadu [(2011) 11 SCC 140], Babu Sahebagouda & others Vs. State of Karnataka [(2024) 8 SCC 149], H.D. Sundara & others Vs. State of Karnataka [(2023) 9 SCC 581], Chandrappa & others Vs. State of Karnataka [(2007) 4 SCC 415], Rajesh Prasad Vs. State of Bihar & another [(2022) 3 SCC 47]** & **Constable 907 Surendra Singh & another Vs. State of Uttarakhand [Criminal Appeal No. 355/2013]**.

12. Learned counsel for the State has also supported the impugned judgment passed by the learned trial Court and would pray for dismissal of the appeal.

13. I have heard learned counsel for the parties and perused the material available on record with utmost satisfaction.

14. From records of the trial Court as well as the first appellate court, the Point emerged for determination of this Court is:-

Point : Whether the trial Court erred in acquitting the accused under Section 385 of IPC & Section 3(1)(x) of the Act, 1989 by perverse finding, is liable to be interfered with by this Court?

15. To appreciate this Point, this Court has to not only minutely examine the evidence as well as the provisions of law applicable in the facts of the case i.e. Sections 383 & 385 of IPC which defines extortion and putting person in fear of injury in order to commit extortion.

> "**Section 383- Extortion**- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".
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> **Section 385- Putting person in fear of injury in order to commit extortion-** Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

16. From perusal of Section 383 of the IPC, the ingredients of 'extortion' are; as under:- (i) the accused must put any person in fear of injury to that person or any other person; (ii) the putting of a person in such fear must be intentional; (iii) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; (iv) such inducement must be done dishonestly. The terms

‘dishonestly’, ‘illegally’ and ‘injury’ used in “Section 383 of the IPC and in “Sections 24, 43 and 44 of the IPC respectively.

17. On a careful consideration of the above definitions and ingredients what transpired is that if someone puts the others intentionally in fear to any injury and thereby, dishonestly induces that person who has been put into fear to deliver to the person any property or valuable security or anything signed or sealed or which may be converted into valuable security shall be liable to be punished for ‘extortion’. Thus, what is necessary for constituting an offence of ‘extortion’ is that the prosecution must prove that on account of being put in fear of injury, the complainant has voluntarily delivered any particular property to the accused putting him into fear. As such, if there was no delivery of property to the accused then the most important ingredient for constituting the offence of ‘extortion’ is not made out. Further, if a person voluntarily delivers any property without there being any fear of injury, an offence of ‘extortion’ cannot be said to have been committed by the accused.

18. In the present case, from evidence of the complainant- Bhujrang Sai (PW-4), it is quite vivid that he has nowhere stated in his evidence before the trial Court that in view of fear caused by the accused, he has given any money or deliver any property to the accused. As such the basic ingredient to attract Section 383 of IPC is missing. Similarly, wife of the complainant (PW-5) has also not adduced the evidence that in pursuance of any fear, they have given any money or property to the accused. The learned trial Court on the basis of evidence has recorded its finding in paragraph 48 that the prosecution is unable to prove beyond reasonable doubt that the accused have demanded Rs. 5 lacs from the complainant and they have given it to the accused. Thus, the

finding of the learned trial Court that the accused have caused fear and in pursuance of that fear, the complainant has given the amount, as such offence of extortion is not made out, cannot held to suffer from perversity or illegality warranting interference by this Court.

19. What are the essential ingredients required to be proved by the prosecution for proving extortion have been examined by Hon'ble the Supreme Court in case of **R.S. Nayak Vs. A.N. Antulay [(1986) 2 SCC 716]** wherein it has been held in paragraph 60 as under:-

> "60. Before a person can be said to put any person to fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future.
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> If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. We agree with this view which has been indicated in **Habibul Razak v. King Emperor**, AIR 1924 All 197. There is no evidence at all in this case that the managements of the sugar cooperatives had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar co-operatives had some of their grievances pending consideration before the Government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of reciprocity, we do not think the appellant is justified in his contention that the ingredients of the offence of extortion have been made out. The evidence led by the prosecution falls short of the requirements of law in regard to the alleged offence of extortion. We see, therefore, no justification in the claim of Mr. Jethmalani that a charge for the offence of extortion should have been framed".

20. It is well settled position of law that unless the offence of extortion as defined under Section 383 of IPC is made out any offence relating to extortion from Sections 383 to 388 of IPC will also not be made out. Hon'ble Supreme Court in case of **Isaac Isanga Musumba Vs. State of Maharashtra [2014 (15) SCC 357]**, has held in paragraphs 3 & 4 as under:-

> "3. We have read the FIR which has been annexed to the writ petition as Annexure P-7 and we find therefrom that the complainants have alleged that the accused persons have shown copies of international warrants issued against the complainants by the Ugandan Court and letters written by Uganda Ministry of Justice & Constitutional Affairs and the accused have threatened to extort 20 million dollars (equivalent to Rs. 110 crores). In the complaint, there is no mention whatsoever that pursuant to the demands made by the accused, any amount was delivered to the accused by the complainants. If that be so, we fail to see as to how an offence of extortion as defined in Section 383, IPC is made out. Section 383, IPC states that whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits 'extortion'. Hence, unless property is delivered to the accused person pursuant to the threat, no offence of extortion is made out and an FIR for the offence under Section 384 could not have been registered by the police.
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> 4. We also find on the reading of the FIR, there is also an allegation that on 18 April, 2013 between 1 p.m. and 5.30 p.m. the accused persons illegally entered into the Head Office of the Company at Fort and demanded 20 million dollars (equivalent to Rs. 110 crores) saying that they have international arrest warrants against the complainants and upon failure to pay the said sum the complainants will have to face dire consequences. It is because of this allegation in the FIR, the offence under Section 441, IPC is alleged to have been committed by the accused persons. On reading Section 441, IPC we find that intent to commit an offence or to intimidate, insult or annoy any person in possession of property is a necessary ingredient of the offence of criminal trespass. It is not disputed that there was a business transaction between the accused persons and the complainants. Hence, if the accused persons have visited the premises of the complainants to make a demand towards their dues, we do not think a case of 'criminal trespass' as defined in Section 441, IPC is made out against the accused persons".

21. From perusal of the aforesaid judgments passed by Hon'ble the Supreme Court and the evidence brought on record before the trial Court, it is quite vivid that no valuable assets have been delivered to the accused by the complainant because of extortion, threaten, pressure created by the accused. Since the essential ingredients of

Section 383 of IPC is not made out, the order of acquittal which is based upon proper appreciation of evidence and material on record, is not liable to be interfered by this Court. Thus, the acquittal of the respondents for alleged commission of offence under Section 385 of IPC, is affirmed.

22. To examine whether the finding recorded by the trial Court acquitting the accused from the clutches of offence under the Act, 1989, it is essential for this Court to attract the provisions of Section 3(1)(x) of the Act, 1989 (before substitution of sub-section 1 (Substituted by Act 1 of 2016 w.e.f. 26.01.2016) which reads as under:-

> "**3 Punishments for offence of atrocities-** (1)Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—
> (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view."

23. From perusal of above-stated position of law, it is quite vivid that Section 3(1)(x) of the Act, 1989 is attracted when the reason for the intentional insult or intimidation by the accused to the person who is a member of Scheduled Caste or Scheduled Tribe, is proved by the prosecution beyond reasonable doubt. In other words, the offence under Section 3(1)(x) cannot stand merely on the fact that the informant/complainant is a member of Scheduled Caste or Scheduled Tribe unless the prosecution is able to prove that insult or intimidation is with the intention to humiliate such a member of the community then only, it can be held that the offence has been committed by the accused. As such, it is not enough that if complainant belongs to Scheduled Caste or a Scheduled Tribe, the offence can be made out under the Act, 1989.

24. It is also well settled position of law that there should be sufficient evidence brought on record by the prosecution that such insult or

intimidation towards the complainant must be on the account of such person being a member of Scheduled Caste or Scheduled Tribe. To further clarify it is pertinent to mention here that mere knowledge of the fact that the complainant is a member of a Scheduled Caste or a Scheduled Tribe is not sufficient to attract Section 3(1)(x) and as per Section 3(1)(x), merely abusing a member of a Scheduled Caste or a Scheduled Tribe is not enough. At the same time, saying caste name would also not constitute an offence. In other words, to constitute an offence under Section 3(1)(x) it would be necessary that the accused abuses a member of a Scheduled Caste or a Scheduled Tribe "by the caste name" in any place within public view. Thus, the allegations must reveal that abuses were laced with caste name, or the caste name had been hurled as an abuse with intention of humiliation as well.

25. The provisions of the Act, 1989 has recently come up for consideration before Hon'ble the Supreme Court in case of **Shajan Skaria Vs. The State of Kerala & another [2024 INSC 625]** wherein it has been held in paragraphs 60, 61 & 62 as under:-

> "60. Thus, the dictum as laid aforesaid is that the offence under Section 3(1)(r) of the Act, 1989 is not established merely on the fact that the complainant is a member of a Scheduled Caste or a Scheduled Tribe, unless there is an intention to humiliate such a member for the reason that he belongs to such community. In other words, it is not the purport of the Act, 1989 that every act of intentional insult or intimidation meted by a person who is not a member of a Scheduled Caste or Scheduled Tribe to a person who belongs to a Scheduled Caste or Scheduled Tribe would attract Section 3(1)(r) of the Act, 1989 merely because it is committed against a person who happens to be a member of a Scheduled Caste or Scheduled Tribe. On the contrary, Section 3(1)(r) of the Act, 1989 is attracted where the reason for the intentional insult or intimidation is that the person who is subjected to it belongs to a Scheduled Caste or Scheduled Tribe. We say so because the object behind the enactment of the Act, 1989 was to provide stringent provisions for punishment of offences which are targeted towards persons belonging to the SC/ST communities for the reason of their caste status.

a. Meaning of the expression “intent to humiliate” appearing in Section 3(1)(r) of the Act, 1989

61. The words “with intent to humiliate” as they appear in the text of Section 3(1)(r) of the Act, 1989 are inextricably linked to the caste identity of the person who is subjected to intentional insult or intimidation. Not every intentional insult or intimidation of a member of a SC/ST community will result into a feeling of caste-based humiliation. It is only in those cases where the intentional insult or intimidation takes place either due to the prevailing practice of untouchability or to reinforce the historically entrenched ideas like the superiority of the “upper castes” over the “lower castes/untouchables”, the notions of ‘purity’ and ‘pollution’, etc. that it could be said to be an insult or intimidation of the type envisaged by the Act, 1989.

62. We would like to refer to the observations of this Court in Ram Krishna Balothia (supra) to further elaborate upon the idea of “humiliation” as it has been used under the Act, 1989. It was observed in the said case that the offences enumerated under the Act, 1989 belong to a separate category as they arise from the practice of ‘untouchability’ and thus the Parliament was competent to enact special laws treating such offences and offenders as belonging to a separate category. Referring to the Statements of Objects and Purposes of the Act, 1989 it was observed by this Court that the object behind the introduction of the Act, 1989 was to afford statutory protection to the Scheduled Castes and the Scheduled Tribes, who were terrorized and subjected to humiliation and indignations upon assertion of their civil rights and resistance to the practice of untouchability. For this reason, mere fact that the person subjected to insult or intimidation belongs to a Scheduled Caste or Scheduled Tribe would not attract the offence under Section 3(1)(r) unless it was the intention of the accused to subject the concerned person to caste-based humiliation.”

26. From the records, it is quite vivid that the prosecution has produced the permanent caste certificate to prove caste of the appellant but this is not the sole evidence to prove beyond reasonable doubt regarding offence under Section 3(1)(x) of the Act, 1989 as the complainant (PW-4) in his examination-in-chief in paragraph 4 has only stated that the accused have entered forcibly in his house and thereafter they have abused him but he has nowhere stated that the accused have humiliated the complainant by caste in a place which is a public view knowing that the complainant belongs to ST community. As such, to

attract the offence, the relevant material has not been produced by the prosecution as such the learned trial Court has not committed any illegality in acquitting the accused under the Act, 1989.

27. So far as the offence under Section 452 of IPC is concerned, the prosecution should prove beyond reasonable doubt that the accused have trespassed the complainant's house having made preparation for causing hurt to the complainant or for assaulting the complainant or his wife or for wrongfully restraining them or for putting them in fear for hurt or assault then only the offence under Section 452 of IPC can be made out against the accused, therefore, the question arises as to what is meant by words "having made preparation" as mentioned in Section 452 of IPC and as to when a person can be said to have made "preparation" before committing the house trespass.

28. **Black's Law Dictionary** (Ninth Edition) defines "preparation" as under:-

The act or process of devising the means necessary to commit a crime. Similarly Concise Oxford English dictionary (Twelfth Edition) defines "preparation" as "The action or process of preparing or being prepared something done to get ready for an event or undertaking."

29. In the context of Section 452 of IPC "having made preparation", Division Bench of Calcutta High Court in case of **Fakir Chandra De and others Vs. Emperor, [1921 SCC Online Cal 208]**, in paragraphs 3 & 6 has held as under:-

> "3. Neither the trying Magistrate nor the learned Sessions Judge who heard the appeal have given their reasons for holding that Section 452, Penal Code, 1860, is applicable to the facts of the present case, on the findings there can be no doubt that house trespass was committed, since it is found that the three accused entered the verandah of the complainant's house and dragged him out. But no further fact is found from

which it can be held that the accused committed house trespass having made preparation for causing hurt to any person or for assaulting any person. From the charge framed it would appear that the Trying Magistrate misunderstood the provisions of Section 452 since it charges the accused with having trespassed into the shop of the complainant for the purpose of assaulting the complainant. This being established would not be sufficient to support a conviction under Section 452, though it might be for a conviction of the three petitioners under Section 448, Penal Code, 1860.

6. We, therefore, make this Rule absolute to this extent. The conviction of the petitioners under Section 452 are altered to convictions under Section 448, Penal Code, 1860, and the sentence of each of the petitioners under this section will be a fine of Rs. 50 each with one fortnight's rigorous imprisonment in default of payment. The sentence on the petitioner Fakir under Section 379, Penal Code, 1860, is reduced to a fine of Rs. 50 with one fortnight's rigorous imprisonment in default of payment. The order as to compensation to complainant will remain unchanged."

30. Again Single Bench of Rajashthan High Court in case of **Dalchand Vs. State [1964 SCC Online Raj 159]** in paragraph 6 has held as under:-

"6. Taking up the first branch of the argument, I must observe that there is a considerable force in it and it must be accepted. It is well settled that there must be clear evidence of preparation for causing hurt to sustain a conviction under sec. 452 Penal Code, 1860. The fact that a person entered another man's house and committed an assault does not necessarily presuppose such preparation, for it may be a case of post hoc ergo propter hoc, The materials on the record of this case show that the fight between the parties developed on account of the complainant having protested against the collection of stones by the accused. The fight was sudden and during the course of the fight the accused took a 'salia' of the cart and inflicted blow upon the complainant. In the circumstances of the case, it is difficult to infer that the accused had made preparation for causing hurt to the complainant. Mr. Singhi appearing for the State made no attempt to counter argument on this aspect of the case."

31. Hon'ble Apex Court in **Abhayanand Mishra Vs. State of Bihar [1961 SCC Online SC 67]**, in paragraph 17 while dealing with term "preparation" has held as under:-

"17. ..... The distinction between preparation to

> commit a crime and an attempt to commit it was indicated by quoting from Mayne's Commentaries on the Indian Penal Code to the effect:
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> "Preparation consists in devising or arranging the means or measures necessary for the commission of the offence; the attempt is the direct movement towards the commission after the preparations have been made."

32. Hon'ble the Supreme Court in case of **State of MP Vs. Mahendra @ Golu [(2022) 12 SCC 442]** in paragraph 14 has defined term "preparation" as under:-

> "14..... If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws"
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> 17. The word "makes any preparation" point to acts done prior to a commencement of the execution of the guilty purpose. "The making of preparation" should be shown to the satisfaction of the Court by some act, such as, the collection of arms, men, provisions etc., which, coupled with other circumstances, plainly manifest the intention to commit the offence. No hard and fast rule can be laid down that any particular act or any particular kind of steps towards the commission of an offence are necessary to constitute " preparation". When one person intends in his mind to commit an offence and having so intended does some act towards achieving that end, he has made preparation for committing that offence.

33. Thus, as per the law discussed above, the preparation means in devising or arranging the means or measure necessary for commission of the offence. Whether any overt-act for recording conviction under Section 452 of IPC would amount to "having made preparation" would depend on the facts and circumstances of each case. The law requires that accused should have done some act to get ready for committing the offence. In the present case, from evidence of complainant (PW-4) and his wife (PW-5), it is not proved that any preparation for hurt, assault or wrongful restrain has been done by the

accused which is essential ingredient to attract the Section 452 of IPC, therefore, the acquittal of the accused by the trial Court for commission of offence under Section 452 of IPC, cannot be held to suffer from perversity or illegality warranting interference by this Court. Even from the evidence of the complainant, it is not proved that on account of extortion money or any valuable asset has been handed over to the accused by the complainant which may lead to record a finding that on account of preparation of house-trespass, the extorted money has been given to the accused. Thus, acquittal of the accused from the charges under Section 452 of IPC cannot be found fault.

34. From the above stated discussion, evidence on record, it is quite vivid that the view of the trial Court cannot be held to suffer from illegality or perversity. From the material brought on record by the prosecution, it cannot be held that the case of conviction has been made out, as such the trial Court has committed patent illegality warranting interference by this Court. The impugned order does not fall within the parameters set out by Hon'ble the Supreme Court with regard to interference by the appellate Court in the acquittal appeal. Hon'ble the Supreme Court in case of **Rajesh Prasad Vs. State of Bihar & another [(2022) 3 SCC 471]** has held in paragraph 28 as under:-

> "28. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words:
>
> "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:
>
> (1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.
>
> (2) The Code of Criminal Procedure, 1973 puts no limitation,

restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the Comment appellate court should not disturb the finding of acquittal recorded by the trial court.”

35. Thus, there is no perversity or illegality in the impugned order of acquittal warranting interference by this Court, therefore, the Point determined by this Court is answered against the appellant and in favour of respondents No. 2 & 3.

36. Consequently, the instant appeal being devoid of merit is liable to be dismissed and accordingly, it is hereby dismissed.

RAVVA SATYANARAYANA RAJU

Digitally signed by RAVVA SATYANARAYANA RAJU
Date: 2026.03.02 11:48:16 +0530

Raju

Sd/-
(Narendra Kumar Vyas)
Judge