



Presented on :- 03/06/2022,
Registered on :- 03/06/2022,
Decided on :-15/04/2026,
Duration :-03Y. 10M. 12D.

**BEFORE THE COURT OF ADDITIONAL SESSIONS JUDGE AT
GONDIA.**

(Presided over by M. T. Asim)

CRIMINAL APPEAL NO.22/2022
(CNR NO. MHGO010007602022)

EXH.NO.17

Haresh s/o Shrichand Adwani

Aged about 48 Years, Occ. Business,

R/o – Sangam Building Sindhi Colony,

Gondia, Dist. Gondia.

* * * **APPELLANT.**

- V E R S U S -

1. **Deepak Motilal Jaipuria**

Aged 52 years, Occ. Business

R/o- Gorelal Chowk, Gondia.

2. **Arun Shrikrishna Agrawal**

Aged 56 years, Occ Business

R/o- Near City police station Gondia

3. **Balkrushna Chandramohan Maheshwari**

Aged 42 years, Occ. Business

R/o- Ganesh Nagar, Gondia

4. **Rinku @ Rahul Pradeepkumar Singhaniya**

Aged 32 years, Occ. Business

R/o- Deshbandhu Ward, Gondia

5. **Dineshkumar Motilal Jaipuria**

Aged 55 years, Occ. Business

R/o- Ganesh Nagar Gondia. * * * **RESPONDENTS.**

APPEAL UNDER SECTION 372 OF CRI. PROCEDURE CODE.

Mr. P. T. Tolani, advocate for Appellant.

Mr. N.S. Popat, advocate for Respondent Nos.1, 3 and 5

Mr. H.B. Bhadupotey, advocate for Respondent No.4

Mr. R.N. Bhajipale, advocate for Respondent No.2.

J U D G M E N T

(Delivered on this 15th day of April-2026)

1] Appellant being victim has taken exception to the judgment and order dated 29-04-2022 passed in Reg. Criminal Case No.153/2017 by learned Chief Judicial Magistrate, Gondia whereby he has acquitted accused for the offence punishable under section 294 r/w section 149 of the Indian Penal Code and also to punishment imposed upon accused for offence under sections 143, 147, 323, 506 r/w section 149 of IPC and prayed for enhancement of sentence in relation to those offences.

2] The case of prosecution in short is that:

On 13/04/2017 at about 05.00 to 5-30 p.m., the informant/appellant Haresh Adwani along with his younger brother, son Gourav Advani and five employees were present in his shop by name Jyoti Trading Company at Gondia. At that time accused persons came there and started to shout. They abused informant uttering words "Haresh bahar nikal sale madarchod, sale bahanchod bahar dukan ke bahar nikal". Hence, an informant called them inside his shop. After entering into the shop of an informant, accused persons

started to abuse him. They were demanding the amount which they advanced to him. The informant told to them that he is not having money and is ready to give his plot to them. At that time accused Rinku assaulted the informant. Two workers of the shop of the informant came to rescue him. They were also assaulted by the accused. Deepak assaulted Waman Patle and Rinku assaulted Ravindra Patle. Deepak Jaipuriya pushed younger brother of informant Naresh and took out money by breaking cash box. However, he thrown the money there. Accused Rinku tried to snatch mobile handset of son of the informant by holding his collar. He was saying “tum sab bahar nikalo dukan hamari hai, mal bhi nahi bechane denge, gadi bulao mal bharo”. Then informant made request to all accused person to sit. Informant told to accused that till money is arranged he would execute document in relation to his property. On those accused persons told to informant “jitani hamari rakkam hai usake tin guna property register karke de, ek sal tak byaj dete rahana usake bad hi teri registry wapas karenge, agar ek sal tak paise nahi diya to property hamari ho jayengi”. Informant told to accused that in proportion to the amount advanced get execute registered document. Thereafter, accused persons went from there. On 15-4-2017 at 3.00 pm again accused Bali @ Balkrishna and Deepak Jaipuriya came in front of the shop of the informant and threatened to see him and will make difficult for him to live. Thereafter, the informant lodged report in Police Station Gondia City on 22-04-2017.

3] On the basis of that report offence punishable under sections 143, 147, 323, 294, 506 r/w 149 of I.P.C has been registered vide Crime No.199/2017. Investigation followed. During investigation, Investigating Officer visited the spot of incident and prepared the spot panchnama in presence of panchas, recorded statement of witnesses. After completion of investigation accused came to be charge sheeted for offence under sections 143, 147, 323, 294, 506 r/w 149 of IPC.

4] Learned Chief Judicial Magistrate, Gondia has framed charge against accused for the offences punishable under sections 143, 147, 323, 294, 506 r/w 149 of the IPC vide Exh.31 and explained the contents thereof to them in vernacular. The accused pleaded not guilty and claimed to be tried. Their defence is of denial and they have been falsely implicated as informant does not want to repay amount borrowed by him from accused.

5] After considering evidence produced by prosecution, learned CJM, Gondia came to hold accused guilty for offences punishable under sections 143, 147, 323, 506 r/w section 149 of the Indian Penal Code and convicted them for said offence and sentenced them to suffer simple imprisonment for six months for each of offence punishable under sections 143, 147, 323 and 506 of IPC. While accused have been acquitted for the offence punishable under section 294 r/w section 149 of IPC. Victim/appellant has challenged

the said judgment of acquittal and sought for enhancement of sentence imposed for offence punishable under sections 143, 147, 323 and 506 r/w section 149 of IPC.

6] Learned counsel for appellant submits that learned trial court failed to consider that there is evidence that neighbours were gathered there and heard abusive words which indicate that they were annoyed. He submits that learned trial court instead of showing leniency should have imposed higher degree of punishment for offence punishable under sections 143, 147, 323 and 506 r/w section 149 of IPC. He submits that learned trial court failed to consider that there was formation of unlawful assembly and manner of commission of offence does not call for leniency while imposing punishment. Accordingly, he prayed for convicting accused for offence punishable under section 294 r/w section 149 of IPC and for enhancement of punishment for offence punishable under sections 143, 147, 323 and 506 r/w section 149 of IPC.

7] Per contra, learned advocate for accused persons submit that they have preferred appeal to set-aside conviction on valid grounds and no case is made out for convicting accused persons for offence punishable under section 294 r/w section 149 of IPC. Therefore, requested to dismiss appeal.

8] Perused record and proceedings in Reg. Criminal Case No.153/2017. Following points arise for my

determination and I have recorded my findings together with reasons thereon as under:

	POINTS	FINDINGS
1)	Whether serious irregularity is committed in framing charge under section 294 of IPC and omission to frame charge?	**Yes.
2)	Whether appellant has made out case for enhancement of sentence?	**Does not survive.
3)	Whether impugned judgment and order calls for interference?	**Yes.
4)	What order?	As per final order

REASONS

As to Point No.1:

9] In light of points raised, I have not discussed evidence of prosecution witnesses. I would like to mention that it is well settled that a charge is a written notice of the precise and specific accusation which an accused is required to meet. Charge must be properly framed and evidence tendered must relate to matters stated in charge. It is to be seen whether an error, omission or irregularity in framing charge has caused miscarriage of justice. Now it is to be seen whether there is material to establish point involved in present appeal.

10] It is to be noted that to prove offence under

section 294 of IPC, the prosecution is required to establish two particulars i] the offender has done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near any public place and ii] has so cause annoyance to others. In present case learned Chief Judicial Magistrate has not taken into consideration recital in FIR about alleged utterances of obscene words by accused in front of shop of informant. Instead of that learned Chief Judicial Magistrate has mentioned utterances allegedly uttered by accused inside the shop of informant which are not obscene while framing charge under section 294 of IPC and proceeded with trial on such defective Charge. Moreso place of incident in charge is incorrectly shown as Sangam building, Sindhi colony, Gondia instead of Kapda line Ganj Bajar, Gondia. Further learned Chief Judicial Magistrate has not framed charge for criminal trespass or house trespass.

11] It is serious error. An omission to frame Charge in relation to criminal trespass or house trespass and incident shown to have occurred in front of the shop of informant has also vitiated trial. It can be said that trial is improper or irregular. Miscarriage of justice has been caused due to error, omission or irregularity in Charge. Hence answer point No.1 in affirmative.

AS TO POINT NO.2:

12] Judicial notice of fact is to be taken that in view of order passed by this court today itself in Criminal Appeal

Nos.16/2022 to 20/2022 filed by accused who have been convicted vide impugned judgment for offence punishable under sections 143, 147, 323 and 506 of IPC are to be retried by learned Chief Judicial Magistrate by setting aside their conviction, so this point does not survive. Hence, I answer point No.2 accordingly.

AS TO POINT NO.3

13] In view of my finding to point No.1 impugned judgment and order calls for interference. Hence, I answer point No.3 in affirmative.

14] In view of my findings to point Nos.1 and 3 and I am satisfied that trial was vitiated by serious illegalities or irregularities in framing Charge under section 294 of IPC an exceptional case is made out for re-trial of accused in Regular Criminal Case No.153/2017 by setting-aside impugned judgment and order in relation to their acquittal. Hence, this order.

ORDER

- 1] Criminal Appeal No.22/2022 is partly allowed.
- 2] Impugned judgment and order dated 29-04-2022 in Reg. Criminal Case No.153/2017 passed by learned Chief Judicial Magistrate, Gondia in relation to acquittal of accused is hereby set aside.

- 3] Criminal Case bearing RCC No.153/2017 is remanded to learned Chief Judicial Magistrate, Gondia with direction that accused be retried after rectifying/ framing the Charge against them in light of observations made in the judgment and decide the case by following due procedure.
- 4] Accused to appear before the learned Chief Judicial Magistrate, Gondia on 06-05-2026.
- 5] Record & Proceedings in Reg. Criminal Case No. 153/2017 be sent back to trial Court.
- 6] Accordingly, appeal stands dispose of.

Gondia.

Dated:-15/04/2026.

(M. T. Asim)
Additional Sessions Judge,
Gondia.