

IN THE COURT OF THE ADDL.C.J.M-ASJ, B H U B A N E S W A R.

Present:
Sri P.L.Satpathy,LL.B.,
Addl.C.J.M-ASJ,Bhubaneswar.

C.T.CASE NO.31/139/14**Code No.4141/14**

(Arising out of GR.1309/11 corresponding to Badagada P.S. Case No.53 dtd 30.4.11)

S T A T E Prosecution.

.....Versus.....

Ramu Jena, aged about 23 years,
S/o. Late Surendra Jena,
At- Badagada Majhi Sahi, PS:Badagada,Dist:Khurda

..... Accused person

OFFENCE U/S.452,294,307 I.P.C

Counsel for the prosecution : Addl.P.P, BBSR

Counsel for the Defence : Sri Raghunath Das, Adv., BBSR.

Date of argument: 24.10.14

Date of judgment: 25.10.14

J U D G M E N T

1. In this case the accused named above stands charged for the offences punishable U/s.452,294,307 I.P.C

2. The prosecution case, in short, is that:

On 30.4.11 at 9.45 pm Rakesh Ku. Jena(pw.1) lodged a written FIR (Ext.1) at Badagada PS alleging therein that on the same night at about 9 pm while he along with his mother pw.2 were in their house situated at Badagada Majhisahi by closing the main gate of the house. The accused pushed the gate trespassed into the house & abused her mother (pw.2) in obscene words and started destroying his household articles by throwing hither and thither. When his mother (pw.2) raised protest the accused pushed her, led her on the ground, pulled and pushed her. Besides that the accused also with intents to murder his mother (pw.2), assaulted her with a paniki but PW.2 by her good luck narrowly escaped only sustaining bleeding injuries on her right hand. When he himself (pw.1) raged protest to the accused, the accused chased after him & threatened to finish him away. On the basis of said written report Badagada PS Case No.53 dtd 30.4.11 was registered U/s.452,294,307 IPC against the accused & investigation was taken there of by Sri Judhistir Pradhan, SI of police(pw.6). During the course of investigation pw.6 examined the informant (pw.1), the mother of the informant (pw.2) as well as other witnesses. Sri N.Panda another SI of police had sent the injury requisition in favour of the injured (pw.2)

with injury requisition (Ext.2/2) to capital hospital for her medical examination and report. PW.6 in the course of his investigation visited the spot, prepared the spot map i.e(visit report) (Ext.5) and prepared the spot report (Ext.2) prepared the spot map (Ext.5/2), arrested the accused on 3.5.11 from his house while the accused was in police custody voluntarily confessed in presence of the witnesses before the police to have committed the offence. His said confessional statement was recorded in separate sheet vide Ext.3. The accused while was in police custody gave recovery of the weapon of the offence i.e sharpe edged paniki which was seized under seizure list (Ext.4). After completion of the investigation pw.6 submitted charge sheet against the accused U/s.452,294,307,506 IPC before the Court of Ld.SDJM, BBSR to face his trial in the court of law. The case was committed to the Court of Sessions, subsequently transferred to this court for disposal according to law.

3. The case of the defence is one of complete denial to the prosecution allegations and false implication.
4. The points for determination in this case are as follows:
 - i) Whether on 30.4.11 at about 9.45 pm the accused had attempted to murder Smt.Ruma Jena (pw.2) by assaulting her with a sharp edged Paniki in her house situates at Majhi sahi Badagada Majhisashi?
 - ii) Whether on the alleged date, time and at place the accused caused annoyance to others by using obscene words towards pw.2 near a public place?
 - iii) Whether on the alleged date, time and at place both the accused committed house trespass in the house of pw.1 and 2 and caused hurt to pw.2 by means of a paniki ?
5. To establish its case prosecution examined 6 witnesses in all, including the informant (pw.1), mother of the informant (pw.2), the medical officer who had clinically examined the injured (pw.2) on police requisition (pw.3) and two independent witnesses in whose presence the accused while in police custody had voluntarily made confessional statement and gave recovery of the weapon of the offence such as Sharpe edged paniki (pw.7 & 8) and the IO of this case (pw.6). PW.4 and 5 were two post-occurrence witnesses. On the other hand, defence adduced no evidence on its side. PW.1 is the informant. His evidence before the court goes to show that one day prior to the alleged occurrence took place on 30.4.11. One day prior to the occurrence night someone has stolen papaya from his bari for which his mother (pw.2) had abused at random. On the occurrence night at about 9 pm while he and his mother (pw.2) were in their house by closing the gril gate of their house the accused by pushing to their grill gate trespassed into their house and abused at his mother in obscene words such as 'BEDHA GHODAGEHI' etc. His evidence further goes to show that hearing such abusive words he became annoyed and when raged protest to the accused the accused being enraged threw away their household articles hither and thither. His evidence further goes to show that the accused holding a paniki attempted to assault his mother (pw.2). When he tried to save his mother (pw.2) from the accused the accused assaulted him and his mother causing injuries on their persons. Besides that the accused had given threat to finish him and his mother away if they

report the matter at PS or disclose the matter before anyone. His evidence further goes to show that within one hour after the occurrence he had lodged the FIR(Ext.1) at Badagada PS.

6. PW.1 in his cross examination has stated that the accused is his own cousin brother . He has admitted in cross examination that he himself had not written the FIR (Ext.1) and he also can not say the name of the person who had scribed the FIR. This witness has also admitted in his examination that he had only put his signatures on Ext.1 without going into its contents. This witness in para 4 of his cross examination has stated that by the time of alleged occurrence he was not present in his house and when he returned to his house he heard about the incident from his mother. He had also admitted in his cross examination that he found no injuries on the persons of his mother and he had no direct knowledge about the incident. He had not seen the accused in his house in the occurrence night.

7. PW.2 is the mother of pw.1, who stated in her evidence that accused is his cousin. About three years back on a day someone had stolen papaya from his bari. She had abused at random. On the next day night at about 9 pm she was alone in her house, electric current was not then in her house. Her son (pw.1) was not in the house then. By that time a person entering into her house tried to assault her when she raged hullah the said person went away running causing injuries on her person with a paniki. After returning of his son to her house she narrated the incident before him & subsequently his son reported the matter before the PS. This witness in her cross examination has categorically stated that she had not seen the accused entering into her house on the alleged occurrence night. She had also stated in her cross examination that the accused had neither abused at her in obscene words nor assaulted her nor committed any overt act on her. PW.3 is the Medical Officer who on the basis of injury requisitions (Ext.2/2) sent by Badagada PS clinically examined the injured Ruma Jena (pw.2) on 30.4.11 at 11.05 pm and found two insized wound on her persons, one was on her Palmer surface and another was over the medial side of right forearm 4 cm above the right wrist. According to her both the injuries were simple in nature and might have been caused by sharp cutting weapon and the edge of the injuries was within six hours at the time of her examination. Accordingly she had prepared injury report (Ext.2)

8. PW.4 & 5 in their evidence before the court have stated that about three to four years back from the date of their depositions in the court on 11.9.14 they had heard that a litigation was initiated between the parties. In their cross examination they have stated that police had not examined them in this case. Pws.7 & 8 were alleged to be the two independent persons in whose presence the accused while was in police custody voluntarily made his confessional statement to have committed the alleged offence and also stated to give recovery of the weapon of the offences like paniki to the police from the place where he had kept concealed and in whose presence the accused gave recovery of the weapon of the offences. Both Pws. 7 & 8 in their evidence before the court denied to have their any knowledge about the confessional statement of the accused before the police while he was in police custody and gave recovery of the weapon of the offences by the accused.. Further they have stated that at the instance of the

police they have put their signatures on some papers. PW>8 have categorically stated in his evidence that he had put his signatures on blank papers. PW.6 is the IO who has stated in his evidence as to how he investigated into the case and submitted charge-sheet.

9. After critical analysis of the evidence of the medical officer (pw.3) I find nothing to disbelieve her evidence. From the evidence of the medical officer it is clear that pw.2 had received two in sized wound on her person. According to the prosecution the accused had caused the injuries received by pw.2 on her person although the defence has no dispute regarding the injuries found by pw.3 on the person of pw.2 but at the same time defence disputes that the accused was not the author of the injuries received by pw.2. Now let us examine as to how far the prosecution has able to connect the accused with the commission of alleged offences. According to the prosecution Pws 1 and 2 are the victims in this case. Although pw.1 in his evidence has corroborated the prosecutions case narrated in the FIR (Ext.1) but he has given a different story in his cross examination. In cross examination pw.1 has categorically stated that he was present in his house while the alleged occurrence took place in his house. He had no direct knowledge about the incident. He had not seen the accused in his house on the occurrence night. He had seen no injuries on her mother. He had heard about the incident from her mother only. Thus pw.1 had given prevaricating evidence from place to place. Therefore, no implicitly can be placed on his evidence. PW.2 is another victim in this case. She has given his support to the prosecution case but she has not implicated the accused with the commission of the alleged offences. PW.2 has categorically stated in her cross examination that the accused is her cousin. The accused has neither abused at her nor assaulted her causing any injuries on her person. More over the accused had committed no overt act against her. PW.2 has also categorically stated in her cross examination that she had not seen the accused entering into her house in the occurrence night. Thus from the aforesaid evidence of pw.2 it is clear that she has made no allegation against the accused. Pws 4 & 5 were not the eye witnesses to the occurrence. PW.3 and 6 were not the witnesses to the fact.

10. From the evidence of the IO (pw.6) it seems that while the accused was in police custody had made voluntarily confessed in presence of two independent witnesses (pws 7 & 8) to have committed the alleged offences. Besides that the accused while in police custody gave recovery of the weapon of the offence i.e paniki in presence of pw.7 which was seized under seizure list (Ext.4) but Pws 7 & 8, the two independent witnesses in whose presence prosecution claims that the accused had made voluntarily confession before the police & gave recovery the weapon of the offence have not supported the aforesaid fact of the prosecution. Hence, in the absence of the corroboration from the witnesses in whose presence the accused had made voluntarily confessed and gave recovery of the weapon of the offence. The sole uncorroborated testimony of the IO (pw.6) in that line can not be believed.

11. In view of my aforesaid discussions and considering the prosecution's evidences in totality available with the case record I am of the view that the prosecution has failed to establish its case beyond all reasonable doubt against the accused.

In the result, I hold the accused is not guilty for the offences punishable U/s.452,294,307IPC and acquit him therefrom U/s.235(1) Cr.P.C.The accused is on court bail and as such he is discharged from his bail bonds.

AC.J.M-ASJ,BBSR

The paniki seized under seizure list (Ext.4) in this case be destroyed four months after the appeal period is over,if there would be no appeal .

AC.J.M-ASJ,BBSR

The judgment is dictated,corrected and pronounced by me in the open court today i.e. on 25th October, 2014 under my hand and seal of this court.

AC.J.M-ASJ,BBSR

List of P.ws. Examined for prosecution.

P.w.1	Rakesh Ku. Jena
P.w.2	Ruma Jena
P.w.3	Dr.Kabita Nayak
p.w.4	Mayadhar Jena
p.w.5	Braja Harichandan
p.w.6	Judhistir Pradhan
p.w.7	Bijaya Ku. Harichandan
p.w.8	Bijaya Ku. Mohanty

List of D. W.s. Examined for defence.

None.

List of exhibits marked for prosecution.

Ext.1	Written FIR
Ext.1/1	Signature of pw.1 in Ext.1
Ext.2	Medical Examination Report of Injured Ruma Jena
Ext.2/1	Signature of pw.3 in Ext.2
Ext.1/2	Endorsement & signature of Rajat Ku. Roy, IIC in Ext.1
Ext.1/3	Formal FIR
Ext.1/4	Signature of IIC Rajat Ku.Roy in Ext.1/3
Ext.3	Statement of accused recorded U/s.27 I.E. Act.
Ext.3/1	Signature of pw.6 in Ext.3
Ext.3/2	Signature of Bijaya Ku. Mohanty in Ext.3
Ext.3/3	Signature of Bijaya ku. Harichandan in Ext.3
Ext.3/4	Signature of accused Ramu Jena in Ext.3
Ext.4	Seizure list dtd 3.5.11
Ext.4/1	Signature of pw.6 in Ext.4
Ext.4/2	Signature of Bijaya Ku. Mohanty on Ext.4
Ext.4/3	Signature of Bijaya Ku. Harichandan in Ext.4
Ext.4/4	Signature o of accused Ramu Jena in Ext.4
Ext.5	Spot visit report dtd. 30.4.11
Ext.5/1	Signature of pw.6 in Ext.5
Ext.5/2	Spot map dtd. 30.4.11
Ext.5/3	Signature of pw.6 in Ext.5/2
Ext.2/2	Injury Requisitions
Ext.2/3	Signature of pw.6 in Ext.2/2

List of exhibits marked for defence.

N i l.

List of M.Os.

Nil

AC.J.M-ASJ,BBSR

