

## IN THE COURT OF THE ACJM-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.33/245/13****Code No.3966/14**

(Arising out of GR.49/12 corresponding to Khandagiri P.S. Case No.09/12)

S T A T E ..... Prosecution.

.....Versus.....

Rabindra Behera aged about 27 years,  
S/o-Gangadhar Behera,  
Vill:Dolagovindapur,PS:Chandanpur, Dist:Puri

..... Accused persons

OFFENCE U/S.341,323,325,307I.P.C

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

Counsel for the Defence : Sri L.Mohapatra &amp; Associates,Advs., BBSR.

Date of argument: 2.12.14

Date of judgment: 03.12.14

**J U D G M E N T**

1. In this case the accused named above stands charged for commission of the offence punishable U/s.341,323,325,307 I.P.C

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

Jhadeswar Parida (pw.1) lodged a written F.I.R(Ext.1) at Khandagiri PS on 06.01.12 at 11 am alleging there in that on 5.1.12 at about 11 pm his nephew namely Bibekananda Parida (pw.2) who was working as an electrician had been to the cosmopoly campus under Khandagiri PS. There accused Rabi Behera who was working as an electrician in the Cosmopoly Project along with his other friend were playing deck at very loud volume, Vivek (pw.2) opposed the accused & his friend for their such act. On this the accused & his friends became annoyed & abused PW.2 in obscene words. Accused Rabi assaulted pw.2 with an iron rod & his friends assaulted pw.2 with broken marvel & Gaja Badi causing injuries on his person. The assailants of pw.2 took away a gold chain, gold ring & a mobile phone from pw.2 while he was lying unconscious due to assault. The accused & his assailants were also broken down his Hero Honda CBZ motorcycle bearing no. OR-02-BQ-2303. Thereafter PW.2 was shifted to Vivekananda hospital for his treatment. On the basis of FIR (Ext.1) Khandagiri PS Case no.9 dtd 6.1.12 U/s.341,323,325,307,379/34 IPC against the accused along with others. Investigation was undertaken there of. After completion of investigation pw.4, the IO of this case submitted charge sheet against the present accused only U/s.341,323,325,307 IPC to face his trial in the court of law. Subsequently this case was committed to the Court of Sessions &

subsequently this case was transferred to this court for disposal according to law.

3. The plea of the accused is one of complete denial to the prosecution allegation & false implication.
4. The points for determination in this case are as follows:
  - i) Whether on 5.1.12 at about 11 pm cosmopoly Project campus under Khandagirti PS the accused wrongfully restrained Viveka Parida (pw.2) ?
  - ii) Whether on the alleged date, time and place the accused voluntarily caused hurt to pw.2 ?
  - iii) Whether on the alleged date, time and at place the accused voluntarily caused grievous hurt to pw.2?
  - iv) Whether on the alleged date, time and at place the accused had attempted to commit murder to pw.2 by assaulting with iron rod & other weapons ?
5. To establish its case, prosecution examined 4 witnesses in all. PW 1 is the informant who is the post occurrence witness. PW.2 is the injured . PW.3 is the doctor who had given his opinion after scrutinizing the CT Scan Report of pw.2 . PW.4 is the IO of this case. On the other hand defence has adduced no evidence on its side
6. Ext.2 is the injury report which reveals that there were five injuries in all on the person of pw.2 . Defence has no dispute regarding the injuries received by pw.2 as evident from Ext.2. It also reveals from Ext.2 that the injuries received by pw.2 on his person were simple in nature . Merely because defence did not challenge the injuries received by pw.2. It can not be said that the accused was responsible for the injuries pw.2 . Now it is to be considered as to how far the prosecution with the help of the materials available on record has able to establish its case against the accused.
7. Pw.2 is the injured himself.. It is evident from his evidence that he was working as electrician in cosmopoly Project, Dumuduma, BBSR & the accused was doing then the contract work of project. His evidence reveals that about one year back prior to the date of occurrence there was quarrel in between some boys of the project . Hearing the same he went to the spot & while separating the parties, he accidentally fall on rough surface & received injuries on his person.

PW.2 in his cross examination has categorically stated that none is responsible for the injuries received by him . Further the evidence of pw.2 reveals that he has not corroborated the facts narrated by pw.1 in the FIR (Ext.1). Further more pw.2 nowhere in his evidence has stated anything against the accused, As such the evidence of pw.2 in no way helps the prosecution to implicate the accused with the commission of the alleged offences

8. PW.1 is the informant, who happens to be the paternal uncle of pw.2. It is evident from his evidence that he was not an eye witness to the alleged occurrence. Further PW.1 in his evidence before the court has stated that a friend of pw.2 gave information to him regarding the admission of pw.2 in the hospital for his treatment for injuries received due to quarrel and on the basis of said information he lodged FIR(Ext.1). His evidence does not disclose the name of the person from whom he heard about the incident and in which hospital pw.2 was admitted for treatment of his injuries, if any, His evidence also does not indicate that pw.2 had narrated before him as to how he received the injuries on his person. PW.2 in his cross examination has stated that he can not say if pw.2 had received any injuries on his person or not. PW.1 in his evidence has admitted that he had not scribed

the FIR (Ext.1) and that he can not say the name of the person, who scribed the FIR and that neither he himself had gone in to the contents of the FIR nor the scribe who had scribed the FIR (Ext.1) had read over and explained the contents of the FIR before him. Therefore the entire evidence of pw.1 does not make out any case against the accused. FIR itself is not a substantive piece of evidence. It can only be used for the purpose of corroboration/ contradiction with the maker there of . PW.1 is the maker of Ext.1 & not corroborated the FIR story in his evidence. Here, prosecution can not get any benefit out of Ext.1

9. PW.3 is the doctor and pw.4 is the I.O who were not the factual witnesses.

10. Considering the entire prosecution evidence available on record I am of the considered view that prosecution case is of no evidence against the accused. Besides the evidence of pws.1 to 4 , the prosecution has no other evidence against the accused. In view of my aforesaid discussion I am of the opinion that the prosecution has failed to implicate the accused with the commission of alleged offences and as such, the accused is entitled to be acquitted.

In the result, I hold the accused not guilty of the offences punishable U/s.341,323,325,307 IPC & acquit him therefrom U/s.235(1) Cr.P.C. The accused is on court bail & as such he be discharged from his bail bonds.

AC.J.M-ASJ,BBSR

The judgment is dictated,corrected and pronounced by me in the open court today

i.e. on 3<sup>rd</sup> December, 2014 under my hand and seal of this court.

AC.J.M-ASJ,BBSR

List of P.ws. Examined for prosecution.

P.w.1 Jhadeswar Parida.  
P.w.2 Bibekananda Parida  
P.w.3 Dr.Pralaya Kishore Nayak,  
p.w. 4 Dayanidhi Nayak

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

None.

List of exhibits marked for prosecution.

Ext.1 Written FIR  
Ext.1/1 Signature of p.w.1 in Ext. 1  
Ext.2 Medical examination report dtd 6.1.12  
Ext.2/1 Opinion & signature of pw.3 in Ext.2  
Ext.1/2 Endorsement & signature of IIC Tapan Ku. Mohanty in Ext.1  
Ext.1/3 Formal FIR  
Ext.1/4 Signature of IIC T.K.Mohanty in Ext.1/3  
Ext.3 Spot Map  
Ext.3/1 Signature of pw.4 in Ext.3  
Ext.4 Seizure list dtd 6.1.12  
Ext.4/1 Signature of pw.4 in Ext.4  
Ext.4/2 Signature of Manoj Ku. Nayak in Ext.4  
Ext.4/3 Signature of Santosh Ku. Nayak  
Ext.5 Zimanama dtd 22.2.12  
Ext.5/1 Signature of pw.4 in Ext.5  
Ext.5/2 Signature of Jaganath Parida in Ext.5  
Ext.2/2 Injury requisition  
Signature of pw.4 in Ext.2/2.

List of exhibits marked for defence.

N i l.

List of M.Os.

Nil

AC.J.M-ASJ,BBSR

