

## 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.42/226/14****Code No.4180/14**

(Arising out of CT.2222/14 corresponding to Laxmisagar P.S. Case No.130/14)

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

.....Versus.....

Dipu Nayak @ Kana about 23 years,  
S/o-Nabakishore Naik,  
Vill: Budhanagar Basti, PS: Laxmisagar, Dist: Khurda

..... Accused persons

OFFENCE U/S.341,323,324,307I.P.C

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

Counsel for the Defence : Sri Sanatan Swain &amp; Associates, Advs., BBSR.

Date of argument: 5.12.14

Date of judgment: 08.12.14

**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.341,323,324,307 I.P.C

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

On 15.6.14 at 9.15 am Nabakishore Naik (pw.9) lodged a written FIR (Ext.3) at Laxmisagar PS alleging there in that his elder son Dipu @ Kana and another son the injured Bapi Naik (pw.1) along with his other two sons are staying in Banaphula Basti (kadali Godown). On 14.6.14 during evening hour at about 6.30 pm pm Dipu Naik his elder son without any cause attacked his younger son Bapi Naik by means of wooden axe handle with intents to kill Bapi Naik (pw.8) , when PW.8 strongly protested the accused, the accused Dipu with a katari assaulted on the head & belley of Bapi ( pw.8) causing bleeding injuries on his person. He immediately shifted pw.8 to capital hospital for his treatment and on the advise of doctor of the capital hospital he shifted pw.8 to SCBMCH for his better treatment. On the basis of the FIR (Ext.3) Laxmisagar PS Case No.130 dtd 15.6.14 U/s.341,323,324,325,326,307 was registered against the accused Dipu Naik and investigation was undertaken there of . After completion of this case police submitted charge sheet against the present accused Dipu Naik @ Kana U/s.341,323,325,326,307 IPC to face his trial in the court of law. Subsequently this case was committed to the Court of Sessions for disposal according to law.

3. The case of t he defence is one of completely denial to the prosecution allegations and

false implications.

4. The points for determination in this case are as follows:

- i) Whether on 14.6.14 at about 6.30 pm the accused Dipu wrongfully restrained his younger brother Bapi Naik (pw.8) in his house situated at Banafula basti ?
- ii) Whether on the alleged date, time and place the accused voluntarily caused hurt to pw.8 with a sharp cutting weapon which is likely to be cause death ?
- iii) Whether on the alleged date, time and at place the accused voluntarily caused hurt to pw.8?
- iv) Whether on the alleged date, time and at place the accused had attempted to commit murder to pw.8 ?

5. To establish its case, prosecution examined 9 witnesses in all. PW 9 is the informant who happens to be the father of the accused and the injured (pw.8). PW.7 is the mother of the accused as well as pw.8 PW.3 & 6 were the seizure witnesses in respect of seizure of the weapon of the offence. PW.1 is the neighbor to the house of the informant who was an eye witness to the occurrence. PW.2 who has got his bettle shop near to the alleged place of occurrence was also a another eye witness to the occurrence. PW.4 & 5 were also two seizure witnesses in respect of seizure of the bed head tickets of the injured (pw.8). On the other hand defence adduced no evidence on its side. Pw.9 is the informant. The accused and pw.8 are his two sons. PW.7 is the wife of pw.9. The accused is the elder brother of pw.8. Reading the evidence of pw.5,7,8,9 it goes to show that there was exchange of hurt words in between the accused and pw.8 on some domestic affairs. But they had not disclosed in their evidence actually what was the said exchange of hurt words used by both the accused and pw.8. Further reading of their evidence goes to show that they have categorically stated that the accused was not responsible for the injuries received by pw.8 on his person. According to pw.8 he had received injuries on his persons due to accidental fall on rough surface. From the evidence of pw.9 it is seen that he had no direct knowledge about the incident. He had not scribed the FIR (Ext.3). He himself had not gone into the contents of the FIR. The scribe of (Ext.3) had not read over and explained the contents before him. He had not stated the scribe that accused Dipu Naik had assaulted Bapi Naik with wooden axe handle as well as katari. PW.7 in her evidence stated that she had no direct knowledge about the incident but she heard from her husband(pw.9) about the incident and the said incident was that her son Bapi received injuries on his persons due to accidental fall on road. Pws.1 and 2 were neighbors to the house of pw.9. Prosecution had examined them as eye witnesses to the occurrence. But they both in their evidence denied to have their any knowledge about the occurrence. Prosecution with the permission of the court put leading questions to them but fails to elicit anything from their mouth in support of the prosecution. Pws.3,4,5,6 were the seizure witnesses. They did not support the factum of seizure of the weapon of the offence like iron katari, wooden axe handle and bed head tickets of the injured Bapina. Besides PW.8 1 to 9 prosecution adduced no other evidence in this case. Considering the prosecution evidence available on record I am of the

considered view that prosecution case is of no evidence against the accused. With regard to the offences U/s.341,323,324,307 IPC 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.341,323,324,325,307 IPC & acquit him therefrom U/s.235(1) Cr.P.C. The accused is in jail custody & as such he be set at liberty forthwith if his further detention is not required in any other case .

AC.J.M-ASJ,BBSR

The Iron katari and wooden axe handle seized by ASI, B.parida of Laxmisagar PS on 15.6.14 in connection with Laxmisagar PS Case NO.130 dtd 15.6.14 U/s.341,323,324,325,326,307 IPC be destroyed four months after the appeal period is over , if there would be no appeal.

ACJM-ASJ,BBSR

The judgment is dictated,corrected and pronounced by me in the open court today  
i.e. on <sup>8th</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   | Samal Das         |
| P.w.2   | Kishore TARani    |
| P.w.3   | Amulya Das        |
| p.w. 4  | Abet Khan         |
| pw.5    | Srikanta Rout     |
| pw.6    | S.K.Mabut         |
| p.w.7   | Kamini Nayak      |
| pw.8    | Bapi Nayak        |
| 1. pw.9 | Nabakishore Nayak |

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

None.

List of exhibits marked for prosecution.

- |         |   |
|---------|---|
| Ext.1   | Signature of pw.4 in seizure list dtd 2.9.14  |
| Ext.1/1 | Signature of p.w.5 in seizure list dtd 2.9.14 |
| Ext.2   | Signature of pw.4 in Ext.3                    |
| Ext.2   | Signature of pw.6 in Seizure list dtd.15.6.14 |
| Ext.3   | FIR   |
| Ext.2/2 | Signature of pw.9 in Ext.3                    |
|         | 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

