

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.17/118-13

(Arising out of GR.95/11 corresponding to Nandankanan P.S. Case No.07
Dated 12.2.11)

S T A T E Prosecution.

.....Versus.....

1. Laxmidhara Naik, aged about 50 years,
S/o- Late Pari Naik
 2. Jagabandhu Naik, aged about 27 years
S/o- Late Hadibandhu Naik
 3. Benudhara Naik, aged about 53 years
S/o- Late balaram Naik
 4. Batakrushna Naik, aged about 24 years
S/o- Late Benudhara Naik
 5. Hadibandhu Naik, aged about 57 years
S/o-Late Doli Naik
 6. Kanhu Naik, aged about 67 years
S/o- Late Balaram Naik
 7. Mantu Naik, aged about 27 years
S/o-Benu Naik
 8. Bidyadhar Naik, aged about 28 years
S/o- Laxmidhara Naik
- All are of Vill: kalyanpur,Benagadia, PS: Nandankanan, Bhubaneswar
District: Khurda

..... Accused person.

OFFENCE U/S.147,148,341,323,506,307/149 IPC

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

Counsel for the defence : Sri Kirtichandra Swain & Associates, Advs, BBSR.

Date of argument: 21.11.2013

Date of judgment: 22.11.2013

J U D G M E N T

1. In this case the above named accused persons jointly stand charged for the offence punishable U/s.147,148,341,323,506,307/149 IPC

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

On 12.2.11 at around 8.15 am Sri Prasant Ku. Nayak (PW.8) lodged a written FIR (ext.6) alleging there in that on the same day at around 7 am while his elder father namely Amina Nayak (PW.3) was going to attend the call of nature, the accused persons forming an unlawful assembly under the arms of weapons with intents to finish PW.3 jointly assaulted him causing injuries on his person. PW.2 had been to the occurrence spot to separate the parties. Apart to that the accused persons also

assaulted Dama Nayak (PW.2) and his wife Susama Nayak (PW.6) (Both father and mother of the informant PW.8) respectively. Ranjan Ku. Nayak (PW.4) and Banamali Nayak (PW.5) causing injuries on their persons. The accused persons had also given threat to the above named injured persons. On the basis of the Ext.6 Nandankanan PS Case No.07 dtd 12.2.2011 was registered U/Ss. 147/148/341/323/506/307/149 IPC against the accused persons and investigation was undertaken there of.. In the course of investigation the IO (PW.9) examined the informant as well as other witnesses in this case, sent the injured persons PW.2,3,4,5 and 6 with injury requisitions to Capital hospital, BBSR for their medical examination through injury requisitions Ext.1/2, 2/2,3/2,4/2,5/2, visited the spot , prepared the spot map (Ext.7) arrested the accused persons namely Laxmidhara Naik, Benudhara Nayak, Batakrushna and Kanhu Nayak on 12.2.11 and forwarded them to the court. PW.9 also arrested the accused persons namely Hadibandhu Nayak, Bidyadhara Nayak, Mantu Nayak on 17.4.11 and released them on police bail. On 2.6.11 PW.9 received the injury reports of the injured persons (ext.1,2,3,4,5) and after completion of investigation submitted charge sheet against the accused persons U/Ss.147/148/341/323/506/307/149 IPC to face their trial in the court of 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 12.2.11 at around 7 am at the Harijana Sahi of village Kalyanpur (Benagadia) the accused persons had formed an unlawful assembly and being the member of the said unlawful assembly had committed rioting in pursuance of their common object?
- ii) Whether on the alleged date, place and at time of occurrence the accused persons being the members of an unlawful assembly in prosecution to the common object of the said unlawful assembly wrongfully restrained PW.3.?
- iii) Whether on the alleged date, place and at time of occurrence the accused persons being the members of an unlawful assembly, in pursuance to the common object of the said unlawful assembly,voluntarily caused hurt to PW.2,4,5 and 6 ?
- iv) Whether on the alleged date, place and at time of occurrence the accused persons being the members of an unlawful assembly, in pursuance to the common object of the said unlawful assembly,had attempted to commit murder to PW.3 Amina Nayak?
- v) Whether on the alleged date, place and at time of occurrence the accused persons being the members of an unlawful assembly, in pursuance to the common object of the said unlawful assembly,had had given threat to PW.2 to 6 with intents to alarm their persons?

5. The prosecution in order to further its case against the accused persons have examined nine witnesses, in all, including the informant PW.8, the injured persons

(PW.2,3,4,5,6) and the IO of this case (PW.9). PW.1 and 7 were the two doctors who had examined the injureds in this case. On the other hand defence adduced no evidence in their defence.

6. PW.1 and 7 are two doctors who had examined the injureds in this case. The evidence of PW.1 discloses that on 12.2.12 he had examined the injured Banamali Nayak, PW.5 and found one swelling injury on his right hand, accordingly prepared the injury report (Ext.1). PW.7 is another doctor who had examined the injured Amina Nayak (PW.3) and found four number of injuries on his persons. Out of the five injuries two injuries were on the head of Pw.3. He had also examined the injured Susama Nayak (PW.6), Ranjan Nayak (PW.4), Dama Nayak (PW.2) and found injuries on their persons. Reading the evidence of PW.1 and 2 i found no latches in their evidence in order to disbelieve their testimony. On the evidence of Pws. 1 and 7 it is clear that Pws. 2,3,4,5 and 6 had received injuries on their persons. Admittedly Pw.1 and 7 were not the witnesses to the fact of the case. Now the question arises for consideration in this case are as to how Pws 2 to 6 received injuries on their persons and whether the present accused persons were responsible for the injuries received by PW.2 to 6 on their persons. PW.8 is the informant. His evidence shows that he was not the occurrence witness rather he was the post occurrence witness. Pws. 2 to 6 are the injured and as such they are the competent witnesses to say actually who were their assailants. Int he instant case Pws. 2 and 6 have not stated nothing against the accused persons. Their evidence does not disclose that the injuries received by them on their persons were caused by the accused persons.. From their evidence it reveals that about 2 years back from the date of their deposition on “Depabali” night there was a disturbance in between two groups of their street and cast people regarding distribution of B “Bhoga” and in the said disturbance some persons of either groups had sustained injuries on their persons. . The evidence of PW.2 to 6 does not disclose that the present accused persons were the members of their opposite group and in the alleged disturbance the accused persons were present and have participated in the disturbance.. PW.9 is the investigating officer . His evidence was only based on evidence collected by him in the course of investigation. Taking the entire prosecution evidence available on record into consideration, I am of the opinion that the prosecution has failed to implicate the accused persons to the commission of the alleged offences.

In the result, I hold the accused persons are not guilty U/Ss.147,148 and U/Ss.341,323,506,307/149 IPC and acquit them therefrom U/s.248(1) CrPC. The

accused persons are on court bail . They be discharged from their bail bonds.

Enter this case as “Mistake of Fact”

AC.J.M-ASJ,BBSR

The judgment is dictated,corrected and pronounced by me in the open court today i.e. on 22nd day of November, 2013 under my hand and seal of this court.

AC.J.M-ASJ,BBSR

List of P.ws. examined for prosecution.

P.w.1	Dr.Jalain Ku. Sarangi
P.w.2	Dama nayak
P.w.3	Amina Nayak
P.w.4	Ranjan Ku. Nayak
P.w.5	Banamali Nayak
P.w.6	Smt.Sussamam Naik
P.w.7	Dr.jayakrishna Mishra
P.w.8	Prasanta nayak
P.w.9	Kailas Ch. Bhoi

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

None.

List of exhibits marked for prosecution.

Ext.1	Medical Examination Report of Injured Banamali Naik
Ext.1/1	Signature of PW.1 in Ext.1
Ext.1/2	Injury requisition of injured Banamali Nayak
Ext.1/3	Signature of PW.9 in Ext.1/2, 2/2, 3/2 Ext.4/2 and 5/2 respectively
Ext.2	Injury report of injured Amina Nayak
ext.2/2	Injury requisition of injured Amina Nayak
Ext.2/3	Signature of PW.9 in Ext.1/2, 2/2, 3/2 Ext.4/2 and 5/2 respectively
Ext.3	Injury report of injured Smt. Susama Nayak
Ext.3/3	Signature of PW.9 in Ext.1/2, 2/2, 3/2 Ext.4/2 and 5/2 respectively
Ext.3/2	Injury Requisition of Susama Naik
Ext.4	Injury report of injured Ranjan Nayak
Ext.4/2	Injury requisition of injured Ranjan Nayak
Ext.4/3	Signature of PW.9 in Ext.1/2, 2/2, 3/2 Ext.4/2 and 5/2 respectively
Ext.5	Injury report of injured Dama Nayak
Ext.5/2	Injury requisition of injured Dama Nayak
Ext.5/3	Signature of PW.9 in Ext.1/2, 2/2, 3/2 Ext.4/2 and 5/2 respectively
Ext.2/1 to 5/1	Signature of PW.7 in Ext.2 to 5 respectively
Ext.6	Written FIR
Ext.6/1	Signature of PW.8 in Ext.6
Ext.6/2	Endorsement of signature of IIC Janardan Padhihari in Ext.6
Ext.6/3	Formal FIR
Ext.6/4	Signature of Janardan Padhy in Ext.6/3
Ext.7	Rough Spot Map
Ext.7/1	Signature of PW.9 in Ext.7

List of exhibits marked for defence.

N i l.

List of M.Os.

Nil

AC.J.M-ASJ,BBSR

