

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.32/41/12

Code No.211701004292012

Arising out of G.R. Case No.330/10 corresponding to Baliana PS Case No.57/2010)

S T A T E

-Versus-

Raju @ Rajesh Behere, aged about 35 years, S/o Madhusudan Behera,
At- Basuaghai, PS-Saheed Nagar, Dist: Khurda.

..... Accused person.

OFFENCE U/S.341,294,307,506 I.P.C

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

Counsel for the defence : Asis Ku.Das & Associates, Advs, BBSR.

Date of argument: 6.8.14

Date of judgment: 7.8.14

J U D G M E N T

1. In this case the accused named above stands charged for commission of offence punishable U/s.341,294,307,506 IPC.

2. Shortly stated, the prosecution case is that :

Panchanan Sundaroy (pw.3) lodged a written FIR (Ext.2) at Baliana PS on 16.4.10 at 11 am alleging there in that on the same day at about 6 AM while he was driving a tractor going on road near Tankapani bridge under Baliana PS jurisdiction, the accused named above detained him and lifted his tractor, caught hold his shirt collar, dragged him from the tractor to the ground, abused him in obscene words with an intention to finish him away assaulted him with fist and kicks causing injuries on his nose. Besides that the accused also threatened him to finish him away, if he will initiate any case against him at anywhere. On the basis of said FIR (Ext.2) Baliana PS Case No.57 dtd.16.4.10 was registered U/s.341,323,307,506,294 IPC against the accused. Investigation of this case was entrusted to Amin Khan, SI of police who in the course of investigation examined the informant as well as other witnesses, issued injury requisitions (Ext.1/2) in favour of injured-informant (pw.3) and sent him to

Kusagadha PHC for his medical examination, visited the spot and prepared spot map (Ext.5), seized the wearing apparels of PW.3 which he had put on at the relevant time of the occurrence under seizure list (Ext.3) and left the said seized wearing apparels in the zima of the informant by executing zimanama (Ext.4), arrested the accused and forwarded him to the court, prepared injury report (Ext.1) and after completion of usual investigation submitted charge sheet against the accused U/s.341,294,307,506 IPC before the Court of Ld. JMFC(O), BBSR. to face his trial in the court of law. Later case was committed to the court of sessions and subsequently transferred to this court for its disposal according to law.

3. The case of the defence is one of completely denial to the prosecution allegations and false implications.

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

i) Whether on 16.4.10 near at Tankapani bridge under Baliana PS the accused wrongfully restrained Panchanan Sundaroy (pw.3) ?

ii) Whether on the alleged date, time and at place the accused caused annoyance to others by using obscene words towards pw.3 in or near a public place ?

iii) Whether on the alleged date, time and at place the accused had attempted to commit murder to pw.3 by causing injuries on his nose ?

5. To establish its case, prosecution has examined as many as seven witnesses including the informant-cum injured (pw.3) on police requisition (pw.1) and the IO. Pws 2,4,5,6 are alleged to be the eyewitnesses to the occurrence. On the other hand no evidence either oral or documentary has been adduced on the side of the defence. PW.3 being the informant-cum-injured is an important witness for the prosecution case. His evidence before the court goes to show that on the alleged date of occurrence at about 6 am near at Tankapani Bridge the accused had given threat to assault for which he had lodged FIR(Ext.2) at Baliana PS. Further his evidence goes to show that police had seized his wearing apparels under seizure list (Ext.3) and left his wearing apparels in his zima by executing zimanama (Ext.4). This much PW.3 has stated in his examination in chief. In cross-examination he has stated that he himself had neither written the FIR (Ext.2) nor he can not say the name of the persons who had scribed the same. His evidence further goes to show that he had only put his signature on the FIR without going into its contents. The aforesaid evidence of pw.3 clearly shows that he has not uttered a single word about offences U/s.341,294 & 307 IPC. This witness had also not stated the exact threatening words used by the accused. His evidence does not disclose that at the relevant time of occurrence the accused was armed with any weapon. His evidence also does not disclose what type of threat the accused had

given. PW.2,4,5,6 are alleged to be the eyewitnesses to the occurrence who denied to have their knowledge about the occurrence. Hence the evidence of PW.3 shows that the accused had given him threat has got no support from other prosecution witnesses.. According to the prosecution allegation accused with intents to murder pw.3 had assaulted him with fists , kicks and caused injuries on his nose Police had send the injured to the hospital for his medical examination. PW.1 is the doctor who claims to have clinically examined on the person of pw.3 on the basis of police requisitions. The evidence of pw.1 in his evidence before the court has deposed that he found no external injuries on pw.3 after his clinical examination. PW.3 has also not stated anything about the assault on him by the accused persons with intent s to murder him. PW.7 is the IO, he has stated that he had seized the wearing apparels of pw.3 which he had put on at the relevant time of alleged occurrence under seizure list (Ext.3). He has also deposed that he left the articles seized under seizure list (Ext.3) to the informant-injured (pw.3) by executing zimanama (Ext.4) as the articles seized have no evidentiary value. None of the witnesses including the informant have stated anything about the offences U/s.294 IPC. FIR is not a substantive piece of evidence but it can be used only to corroborate and contradict the maker thereof, when pw.3 being the maker of the FIR (Ext.3) does not corroborate the FIR story in this circumstances the prosecution can not take any benefit out of the FIR (Ext.2). Considering the evidence available on record and in view of my aforesaid discussions, I am of the opinion that the prosecution has not able to establish its case U/s.341,294,307,506 IPC beyond all reasonable doubt and as such the accused is entitled to be acquitted.

In the result, I hold the accused not guilty for commission of offence U/s.341,294,307,506 IPC and acquit him therefrom U/s.235(1)CrPC. The accused is on court bail and as such he be discharged from his bail bonds.

Addl.C.J.M-A.S.J,Bhubaneswar.

The zimanama (ext.4) is hereby can-celled and the property seized under seizure list (Ext.3) be retained with the zimadar-cum-informant Panchanan Sundaroy. The property disposal order shall be carried out four months after the appeal period is over, if there would be no appeal.

Addl.C.J.M-A.S.J,Bhubaneswar.

The judgment is dictated,corrected and pronounced by me in the open court today i.e. on 7th day of August, 2014 under my hand and seal of this court.

Addl.C.J.M-A.S.J,Bhubaneswar.

List of P.ws. examined for prosecution.

P.w.1	Dr.Kalandicharan Biswal
P.w.2	Babuli Swain
P.w.3	Panchanan Sundaroy
P.W.4	Dilu Das
P.W.5	Santi SidhuNaru @ Kalu Nayak
P.W.6	mrutyunjaya Bhoi
p.w 7	Amin Khan

List of D.ws.examined for defence.

None.

List of exhibits marked for prosecution.

Ext.1	Medical Examination Report of Panchanan Sundaroy
Ext.1/1	Signature of p.w.1 in Ext.1
Ext.2	Written FIR
Ext. 2/1	Signature of pw.3 in Ext.2
Ext.3	Seizure list dtd.16.4.10
Ext.3/1	Signature of pw.3 in Ext.3
Ext.4	Zimanama
Ext.4/1	Signature of pw.3 on Ext.4
Ext.2/2	Endorsement & signature of J.K.Mohapatra on Ext.2
Ext.2/3	Formal FIR
Ext.2/4	Signature of JK Mohapatra in Ext.2/3
Ext.1/2	Injury Requisition.
Ext.1/3	Signature of pw.7 in Ext.1/2
Ext.5	Spot Map
Ext.5/1	Signature of PW7 in Ext.5
Ext.3/2	Signature of pw.7 in ext.3
Ext.3/3	Signature of Biswanath Das in Ext.3
Ext.3/4	Signature of Upendra Panda in Ext.3
Ext.4/2	Signature of pw.7 in Ext.4

List of exhibits marked for defence.

N i l.

List of M.Os.

N i l.

