

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.38/261-13

(Arising out of CT.1701/13 corresponding to Khandagiri P.S. Case No.207
Dated 4.5.13)

S T A T E Prosecution.

.....Versus.....

1. Sk. Rehebar Ahammad, aged about 32 years,

S/o-Sk. Tajumule Ahammed

At: Jadupur, PS:Khandagiri, Dist: Khurda

..... Accused person.

OFFENCE U/S.307I.P.C

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

Counsel for the defence : Sri B.Behera & 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 stand charged for the offence punishable U/s.307 IPC

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

On 4.5.13 at around 11.35 pm Sk.Tajmul Ahemed (PW.1) lodged a written FIR (Ext.1) at Khandagiri PS alleging there in that on the same night at around 9.35 pm while his youngest son Sk. Waddud Ahemed (PW.7) was staying in his house located at Jadupur by that time his middle son accused Sk. Rahebar assaulted PW.7 by means of a sharp cutting weapon i.e (Paniki) causing severe bleeding injury on his head and nose. They immediately shifted PW.7 to capital hospital and other hospitals for his treatment. On the written report (Ext.1) lodged by PW.1, Khandagiri PS Case No.207 dtd. 4.5.13 U/s.307 IPC was registered against the accused and investigation was undertaken there of. In the course of investigation police examined the informant PW.1, the injured PW.7 as well as the other witnesses in this case, visited the spot, issued injury requisition in favour of PW.7 to M.O, Capital Hospital, BBSR for

medical examination and report, seized the weapon of offence from the bed room of the accused in presence of witness under proper seizure list, arrested the accused and forwarded him to the court, received the injury report of the injured (PW.7) from SCB Medical College & Hospital, Cuttack and after completion of investigation police submitted charge sheet against the above named accused U/s.307 IPC to face his 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 4.5.13 at around 9.35 pm in a room of the house of the injured (PW.7) located at Vill: Jadupur, the accused attempted to commit murder to PW.7 by assaulting him with a sharp cutting weapon(Paniki)?

5. The prosecution in order to establish its case against the accused has examined 10 witnesses, in all, including the informant (PW.1) and the injured (PW.7) PW.2 is the elder brother of the injured (PW.7) and the accused. PW.3 is the wife of PW.2 PW.4 is the wife of the injured (PW.7). PW.5 is the Sr. Resident doctor in Neurosurgery Department, SCB Medical College and Hospital, Cuttack who had medically examined the injured (PW.7) and submitted injury report Ext.2. PW.8 and 9 were the witnesses to the seizure of the weapons of the offence. PW.6 and 10 are the co-villagers of the parties who alleged to be the witness to the occurrence. On the other hand, defence adduced no evidence on its side.

6. Admittedly defence has no dispute regarding the grievous injury received by PW.7 on his left occipital region. On 4.5.13 at night at around 9.35 pm while PW.7 was staying in his room situated at village Jadupur. Since defence has no dispute regarding the injury received by PW.7 on his person it needs no detail discussion about the evidence of the doctor(PW.5). Nearly because defence has no dispute regarding the injuries received by PW.7 on his person it can not be said that the accused himself was the author of the crime in this case. The accused right from beginning to end has denied his involvement with the alleged crime. The question that arises for consideration is that whether the accused was the author of the injury received by PW.7 on his person. PW.7 is the injured is the best person who can speak, who was his assailants but in the instant case PW.7 in his evidence has not implicated the accused in this case. His evidence goes to show that on the alleged date and at time he had alone slept in a room of his house and it was then at about 10 pm. He woke up to pass urine. While returning back to his bed after passing urine

he felt severe head reeling and all sides of his house looked at him and he fell down facing upward and he loss his sense then and there. It is also seen from his evidence that when he gained sense he found he was in the hospital. From the aforesaid evidence of the injured PW.7 it is clear that this witness no where in his evidence has stated that due to assault with a deadly weapon by the accused he had received the injury found by the doctor PW.5 on his persons. The other witnesses examined in this case on the side of the prosecution have stated nothing against the accused. Besides, the evidence of PW.1 to 10 prosecution has no other evidence against the accused persons. Taking the entire evidence led by the prosecution in this case into consideration I am of the considered view that the prosecution has failed to establish its case against the accused and as such the accused is entitled to be acquitted.

In the result, I hold the accused persons are not guilty U/Ss.307 IPC and acquit him therefrom U/s.235(1) CrPC. The accused is on court bail . He be discharged from their bail bonds.

Enter this case as “Mistake of Fact”

AC.J.M-ASJ,BBSR

The seized weapon of the offence i.e one iron chapped 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 22nd day of November, 2013 under my hand and seal of this court.

AC.J.M-ASJ,BBSR

List of P.w.s. examined for prosecution.

P.w.1	Sk. Tajamul Ahemad
P.w.2	Sk. Tajudin
P.w.3	Memuni Nisha
P.w.4	Samsasd Begam
P.w.5	Dr.Sitansu Ku. Rout
P.w.6	Sk. Sayadali Sajjad

P.w.7 Sk.Wadudu Ahemad
P.w.8 Mujahid Hussain
P.w.9 Sayed Asif Alli
P.w.10 Sabir @ Samir Khan

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 Injury report of Abdul Wodud
Ext.2/1 Signature of PW.5 in Ext.2
Ext.3 Signature of PW.8 in seizure list
Ext.3/1 Signature of PW.9 in seizure list.

List of exhibits marked for defence.

N i l.

List of M.Os.

Nil

AC.J.M-ASJ,BBSR