

IN THE COURT OF THE ADDL.C.J.M, 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.44/47/07-13

(Arising out of GR.1428/06 corresponding to Chandaka P.S. Case No.26 of
2006 Dated 19.4.06)

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

1. Swadhin Majhi, aged about 42 years,
S/o-Nabin Majhi

Village; Kujimahal, PS: Chandaka,
Bhubaneswar, District: Khurda.

..... Accused person.

OFFENCE U/S.341,323,294,506,436 I.P.C

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

Counsel for the defence : Sri Sri Amiya Ku. Sahu & Associates,
Advts, BBSR.

Date of argument: 12.11.2013

Date of judgment: 14.11.2013

J U D G M E N T

1. In this case the above named accused stands charged U/s.341,323,294,506,436 I.P.C.
2. The prosecution case, in short, is that:
Sri Dambarudhara Behera (PW.1) lodged a written FIR (Ext.1) at Chandaka PS on 9.4.06 at around 11 am alleging there in that he had a thatched tea and tiffin shop at Kujimahal, Kabari Sahi. On 8.4.06 at around 8am while he was selling tea by that time the accused came there and for no reason abused at him in obscene words. Further also the accused abusing so holding a katari with his hand gave threat to him to finish him away. On this he raised protest. As he raised protest to the aforesaid act of the accused, the accused being enraged pulled him away from his shop and dealt fist and kicks to him and threatened him to set fire in his shop today. Hearing hullah several persons present nearby

arrived at his shop. Seeing the gathering of the people the accused went away. It is further alleged by PW.1 that in the intervening night on 8/9.4.2006 at around 3 am the accused set fire in his shop when the people those who had slept on the verendha of nearby club house came and the accused went away and those people extinguished the fire. On the basis of the said FIR (Ext.1) of PW.1 Chandaka police registered ChandakaPSCaseNo.26 dtd.9.4.06U/Ss.341,323,294,506,436 I.P.C against the accused and investigation was undertaken there of. During the course of investigation police examined the informant as well as the other witnesses in this case, visited the spot, seized the ashes and half burnt substance from the spot in presence of witnesses namely Tikana Nayak (PW.2), Gokula behera (PW.4) under a seizure list (Ext.2), arrested the accused & forwarded him to the court and after completion of the usual investigation submitted charge sheet U/Ss. 341,323,294,506,436 I.P.C against the accused 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 8.4.06 at around 8 am at the tea and tiffin shop of Dambarudhara Behera (PW.1) situated at Kabari Sahi of kujimahal you wrongfully restraint him ?
- ii) Whether on the alleged date, at time and at place the accused caused annoyance to others by uttering obscene words at (PW.1) in or near a public place?
- iii) Whether on the alleged date, at time and at place the accused voluntarily caused hurt to PW.1?
- iv) Whether on the alleged date, at time and at place the accused had given threat to PW.1 to set fire his tea and tiffin shop with intents to cause alarm to his persons or property?
- v) Whether in the intervening night 8/9.4.06 at around 3 am the accused caused mischief by setting fire with his aforesaid tea stall with intents to destroy the said shop of PW.1 ?

5. The prosecution in order to establish its case against the accused has examined, in all, five witnesses on its side on the other hand defence adduce no evidence on its side.

6. PW.1 is the informant PW.2 and 3 were the witnesses to the seizure of the articles seized under seizure list (Ext.2). PW.4 and 5 are alleged to be the occurrence witness on the other hand defence adduced no evidence on its side. It is the admitted fact that neither the informant himself nor the other witnesses examined in this case (PW.2 to 5) have stated anything with regard to the offence U/Ss.294,341,323,506,436IPC. Reading the prosecution evidence available on record it shows that on 8/9.4.2006 night the thatched tea and tiffin shop of the informant PW.1 situated at Kujimahal has burnt. As per the allegations in the FIR the accused had set fire in the shop of PW.1. On the other hand the

accused right from beginning to end has denied to have his involvement with the alleged setting fire. Now the main question which is required to be considered is that whether the person who had set fire in the shop of PW.1 in the alleged intervening night was none the else but the present accused. Although the accused has not disputed about the alleged set fire that does not mean the accused himself has set fire in question. PW.1 is the informant who has stated in his evidence that he does not know who had set fire in his shop and how fire was set out in his shop. Similarly PW.2 to 5 has stated on the same line what PW.1 has stated. The evidence led by the prosecution in this case does not disclose that the accused had set fire in the tea and tiffin shop of the informant. When prosecution case against the accused U/Ss.294,341,323,506,436 IPC is of no evidence and as such prosecution has failed to establish its case against the accused. The accused is entitled to be acquitted.

In the result, I hold the accused not guilty U/Ss. 294,341,323,436,506 IPC and acquit him therefrom U/s.235(1) CrPC. The accused is in jail custody. He be set at liberty forth with if his further detention is no more required in any other case.

Enter this case as "Mistake of Fact"

AC.J.M-ASJ,BBSR

The seized articles seized under seizure list (Ext.2) 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 14th 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	Dambarudhara Behera
p.w.2	Tikan Nayak
P.w.3	Gokul Behera
P.w.4	Narendra Majhi
P.w.5	Gajendra Sahoo

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 Seizure list dtd.9.4.06

Ext.2/1 Signature of PW.2 in Ext.2

Ext.2/2 Signature of PW.3 in Ext.2

List of exhibits marked for defence.

N i l.

List of M.Os. Marked by prosecution

Nil

AC.J.M-ASJ,BBSR