

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.8/61/13**

(Arising out of GR.2263/12 corresponding to Khandagiri P.S.Case No.260/12)

S T A T E

..... Prosecution.

.....Versus.....

Kabi Dash, aged about 36 years,  
S/o. Rushi Dash,  
Village: Kolathia,  
PS:Khandagiri, Dist: Khurda

..... Accused persons

OFFENCE U/S.341,324,394,307,332,353 I.P.C

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

Counsel for the defence :Sri A.K.Acharya & Asso.,Advs, BBSR.

Date of argument: 6.5.14

Date of judgment: 17.5.14

**J U D G M E N T**

1. In this case the accused named above stands charged for the offence punishable

U/S.341/307/324/394/332/353I.P.C.

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

Krushna Ch. Senapati (PW.2) lodged a written report (Ext.1) at Khandagiri PS on 3.7.12 at 11.30 am alleging there in that on the same date, at around 9 pm while he was cleaning his auto in front of his house situates at village Kolathia under Khandagiri PS, the accused came there holding his shirt colour pointing a katari on his neck dragged him to his (accused's) house where accused abused him in obscene words and asked pw.2 to tell his wife to give Rs.1 lakh to accused otherwise he would be cut into pieces. It is further alleged by him that the accused took away a gold chain, mobile wrist watch and one money-purse containing Rs.1000/- from him. Thereafter the accused dragged him to his front gate where he assaulted pw.2 by means of katari on his left hand causing bleeding injuries The accused after assaulting pw.2 told to give his demanded money of Rs.1 lakh to him immediately. By that time some police personnel arrived there. Seeing the police personnel the accused attacked one of the police officer namely Satrughna Behera with a katari causing bleeding injuries on his left check.

Other police personnel present there shifted injured police officer with PCR Van to Vivekananda hospital for treatment of injured.

On the basis of the written report (Ext.1) Khandagiri PS Case NO.260 dtd.3.7.12 U/s.341/324/394/307/326/353 IPC was registered against the accused and investigation was undertaken there of. After completion of investigation IO submitted charge sheet against the accused U/s.341/324/394/307/332/353 IPC before the court of Ld. SDJM, BBSR to stand his trial in the court of law. The case was committed to the court of sessions and subsequently was transferred to this court for disposal according to law.

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

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

- i) Whether on 3.2.12 night at about 9.40 pm at Kolathia, the accused wrongfully restrained Krushna Chandra Senapati (PW.2)?
- ii) Whether on the alleged date, time and at place of occurrence the accused voluntarily caused hurt to pw.2 as well as Satrughna Behera, ASI of police with a katari, a sharp cutting weapon which is likely to cause death. ?
- iii) Whether on the alleged date, time and at place of occurrence the accused attempted to commit murder to pw.2 & Satrughna Behera ?
- Iv) Whether on the alleged date, time and at place of occurrence the accused causing injury on PW.2 & committed robbery in respect of a gold chain, a mobile set, a wrist watch and money purse containing a sum of Rs.1000/- from the possession of pw.2 ?
- v) Whether Satrughna Behera, the then ASI of police, Khandagiri PS was a public servant ?
- vi) Whether said Satrughna Behera was discharging his lawful duty as a public servant on the alleged date time and place ?
- Vii) Whether on the alleged date, time and at place the accused caused hurt to Satrughna Behera, the then ASI of police, Khandagiri PS to prevent/deter him from discharging his lawful duty as a public servant?

5. To establish it's case prosecution has examined as many as 7 witnesses in all. PW.2 is the informant cum injured. PW.1 and 3 are respectively the wife and son of PW.1. PW.4 is the doctor who had clinically examined PW.2 and Satrughna Behera, the then ASI of police, Khandagiri PS. PW.5 and 6 are two police officers on duty in PCR Van but had accompanied with Satrughna Behera, ASI of police to the occurrence spot. PW.7 is the IO of this case on the other hand defence has examined one witness as DW.1 who is none but the wife of the accused. It is the admitted fact that Satrughna Behera being the ASI of police in PS during the

relevant time was a public servant in terms of Section 21 of the IPC .

So-far as the offence U/s.332 & 353 IPC are concerned , the prosecution case is that on 3.7.12 night the IIC Khandagiri PS , on the basis of the information received from Smt. Mamata Senapati (PW.1) directed Satrughna Behera, ASI of police proceeded to village Kolathia to look into the information send by PW.1. As no police vehicle was available at the PS then, Satrughna Behera, ASI of police went to the village Kolathia by PCR Van NO.16 wherein Prafulla Ku. Behera (PW.5), Tapan Ku. Mohapatra (PW.6) both were ASI of police on duty.

It is also the case of the prosecution that at Village Kolathia when Satrughna Behera, ASI of police attempted to nab to the accused near his house the accused assaulted said Strughna Behera with a sharp cutting weapon causing serious bleeding injury on his face and went away. Thereafter said Satrughna Behera shifted to Vivekananda hospital for his treatment.

The police officer who had received the information and on whose direction Satrughna Behera, ASI of police had been to village kolathia on duty had not been examined in this case. No station diary entry of the PS showing receipt of information from Mamata Senapati(PW.1) has been produced or proved during the trial by the prosecution. To prove the offence U/s.332 and 353 IPC Satrughna Behera, ASI of police was a vital witness because as per the prosecution allegation he had sustained injuries on his persons while discharging his lawful duty as a public servant. But the said Satrughna Behera , has not been examined in this case. His non-examination stands un-explained. It is not the case of the prosecution that the said Satrughna Behera is dead or unable to move or speak. Hence not furnishing any explanation for non-examination of said Satrughna Behera, ASI of police, a vital witness in this case, non-explanation of police officers who had received information from PW.1 in the occurrence night and non-production of relevant station dairy of the PS is a serious lacuna with the prosecution case which is one of the important factor to disbelieve the prosecution case. Apart to that the police officers who had examined as PW.5 and 6 in this case had not stated anything in the court that they could not discharge their lawful duties as public servant due to such act of the accused. The presence of PW.5 and 6 at village Kolathia at the relevant time is also not free from doubt because as per the prosecution's version both PW.5 and 6 had been to Kolathia village along with Satrughna Behera, ASI of police with PCR Van NO.16 where as PW.5 in Para 1 of his examination in chief has stated that they had been to village Kolathia with PCR Van no.60. As per the prosecution case the accused had caused injury on the person of Satrughna Behera, ASI of police by means of katari where as PW.5 and 6 in their evidence before the court that the accused had used bhujali while causing injury on said Satrughna Behera at no stage of imagination both the weapon i.e katari and bhujali are one and same

weapon. Both the weapons are two different type of weapons. PW.4 is the doctor who claims to have clinically examined Satrughna Behera from his evidence it is seen that Satrughna Behera had received injuries on his left cheek where as PW.5 who claims to have seen the injuries on the person of Satrughna Behera and who also shifted the said injured Satrughna Behera to hospital for his treatment has deposed in his examination in chief that Satrughna Behera had received injuries on his right cheek. Hence this discrepancy also affects the prosecution case seriously. Ext.3 is the injury report of Satrughna Behera. Neither Ext.3 nor the evidence of the doctor (PW.4) who had clinically examined Satrughna Behera reveals the date and time of medical examination of Satrughna Behera. Hence, injury report (Ext.3) is also not free from doubt. Taking all these aspects into consideration, I am of the opinion that the prosecution has failed to establish its case U/s.332/353 IPC against the accused persons. With regard to the rest of the offences, it is a case of the prosecution that on 3.7.12 at about 9.40 pm while Krushna Ch. Senapati (PW.2) was cleaning his auto rickshaw in front of his house at village Kolathia, the accused came there holding his shirt collar pointing a katari on his neck dragged him away to his house and asked him to tell his wife to give him Rs.1,00000/- otherwise he would be cut into pieces. Thereafter the accused took away a gold chain, mobile, wrist watch and one money purse containing Rs.1000/- from the possession of PW.2. The accused also dragged PW.2 to the front gate of his house where at he assaulted with intents to kill him with a katari with a view that seeing his injury PW.1 would give money to him immediately.

6. According to PW.3 who is son of PW.2, the occurrence in this case took place on 3.7.12 in between 3.30 pm to 9.40 pm which is not the case of the prosecution. According to the case of the prosecution the occurrence took place at around 9.40 pm on 3.7.12. No where prosecution has stated that occurrence in question had taken place from 3.30 pm onwards till 9.40 pm. More over PW.3 was post occurrence witness. PW.1 is the wife of PW.3. At the time of alleged incident she was inside the house. On hearing the shout from near by residents she came out and came to know that the accused dragged her husband towards his house. It is true that no near by residents of the house of Pw.2 who had created shout while the accused taking away, PW.2 from village danda in front of his (PW.2) house has not been examined in this case. They were the material witnesses to this case with holding those material witness without any explanation creates a serious doubt about the genuineness of the prosecution. As per the prosecution version while PW.2 was cleaning his auto rickshaw in the village danda the accused came there and dragged him away towards his house. PW.7 is the IO of this case, his evidence goes to show that on the occurrence night he has been to the case village but nowhere in his evidence he has stated that an auto rickshaw was parking in front of the house of PW.2 From

the evidence of PW.1 and 2 it reveals that PW.2 told his wife PW.1 by his mobile to his wife that the accused was demanding Rs.1 lakh from him. After receipt of this information from her husband PW.1 intimated this fact by over phone to the police but the IO has not verified the call details of PW.1 and 2 over phone. None of the prosecution witnesses has seen the accused assaulting PW.2. More over the doctor who had clinically examined PW.2 has opined that the injuries found by him on the person was caused within 5 to 6 hours but in his injury report (Ext.2) he had not mentioned the time of his examination. Therefore, it is not possible to give definite opinion that PW.2 had sustained injury by the relevant time of occurrence. It is also seen from the injury requisition (Ext.1/3) that the IO (PW7) had received injury requisitions in favour of PW.2 to Vivekananda hospital on 4.7.12. Prosecution has not clarified what circumstances prevented the doctor not to give the injury report immediately after receipt of injury requisitions although PW.4 claims he had examined PW.5 on 3.7.12. In the instant case PW.4 had prepared the injury report (Ext.2) on 2.1.13 about six months after receipt of the injury requisitions. This circumstance also creates doubt about the bonafideness of the prosecution case. The doctor PW.4 who had clinically examined the so called injured (PW.2) as well as Satrugna Behera, ASI of police has nowhere in his evidence has stated that the injuries as found by him on the above named two persons were sufficient to cause death in the ordinary course of nature rather the evidence of PW.4 reveals that the injuries on the person of PW.2 and Satrugna Behera were simple in nature and were not present over their vital part of the body. It is the prosecution's allegations that the accused committed robbery in respect of the property like mobile, wrist watch, gold chain, money purse containing Rs.1000/- of PW.2 by voluntarily causing hurt on the person of PW.2. In my forgoing discussion I am of the opinion that the injuries on the person of PW.2 alleged to have been caused by the accused is doubtful. Nothing has been seized from the possession of the accused. It is the case of the prosecution that the accused disclosed that soon after the occurrence he had thrown away the weapon of the offence (katari) and the property taken by him in course of robbery except cash into a pond but the evidence of the IO does not disclose that he had taken sincere step to get it recovered from the pond. More over the evidence of the IO does not disclose actually in which pond the accused had thrown away all those properties. The such statement of the accused has not been recorded by the IO U/s.27 Evidence Act or the voluntarily confessional statement of the accused as alleged by the IO was also not recorded by any competent Magistrate U/s.164 CrPC.

Therefore, in view of my analysis supra I am of the view that the prosecution case with regard to the offences U/s.341,324,394,307 IPC is not free from doubt and prosecution has not

come to the court with clean hands. As such, the detail analysis regarding the examination of DW.1 does not arise.

In the result I hold the accused is not guilty U/s. 341,324,394,307,353,332 IPC and acquit him there from U/s.235(1) CrPC. The accused is on court bail and as such he be discharged from his bail bonds.

AC.J.M-ASJ,BBSR

The articles seized in this case like katari, one blood stained blanket, two numbers of blood stained pillow 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 17<sup>th</sup>, May,2014 under my hand and seal of this court.

AC.J.M-ASJ,BBSR

List of P.ws. examined for prosecution.

P.w.1 Smt.Mamata Senapati  
P.w.2 Krushna Chandra Senapati  
P.w.3 Hrudananda Senapati  
P.w.4 Dr.Rahul Rout  
p.w. 5. Prafulla Ku.Behera  
p.w. 6 Tapan Ku. Mohapatra  
p.w. 7 Surendranath Bal

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

D.W.1 Smt.Rashmita Das

List of exhibits marked for prosecution.

Ext.1 Written FIR.  
Ext.1/1 Signature of PW.12in Ext.1  
Ext.2 Medical examination report of KC Senapati  
Ext.2/1 Signature of p.w. 4 in Ext. 2  
Ext.3 Medical examination report of Satrughna Behera  
Ext.3/1 Signature of PW.4 in Ext.3  
Ext.1/2 Endorsement & signature of Tapan Mohanty in Ext.1  
Ext.1/3 Formal FIR  
Ext.1/4 Signature of Tapan Mohanty in Ext.1/3  
Ext.4 Rough spot map dtd. 4.7.12  
Ext.4/1 Signature of PW.7 in Ext.4  
Ext.4/2 Spot report dtd. 4.7.12  
Ext.4/3 Signature of PW.7 in Ext.4/2  
Ext.2/2 Injury requisition of injured Krushna Chandra Senapati  
Ext.2/3 Signature of PW.7 in Ext.2/2  
Ext.3/2 Injury requisition of injured Satrughna Behera  
Ext.3/3 Signature of PW.7 in Ext.3/2

List of exhibits marked for defence.

N i l.  
List of M.Os.  
Nil

AC.J.M-ASJ,BBSR