

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.13/73-13**

(Arising out of GR.2076/07 corresponding to Mancheswar P.S. Case  
No.131/07 Dated15.6.07)

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

1. Biswajit Mohanty @ Pintu, aged about 30 years,  
S/o-Jayanta Mohanty

2. Arjuna Pattnayak @ Aju, aged about 39 years  
S/o-Daitari pattnayak,

3. Amulya Pattnayak, aged about 41 years  
S/o-Subasis Ch. Pattanaik

4. Priti Prakash Pattnaik , aged about 27 years.  
S/o Nursingha Charan Pattnayak.

All are of Village; Hanspal, PS: Mancheswar, Bhubaneswar  
District: Khurda.

..... Accused persons.

OFFENCE U/S.341,294,323,307,506/34 I.P.C

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

Counsel for the defence : Sri Niranjan Kanungo, Sri Prasana Ku. Pattnaik, Sri  
Bhabani Prasad Dash & Sri Sanatana Swain  
& Associates, Advs, BBSR.

Date of argument: 1.112013

Date of judgment: 4.11.2013

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

1. In this case the above named accused persons jointly stand charged  
U/s.341,294,323,307,506/34 IPC.

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

Rabindra Ku. Sahu (PW.1) had lodged a written FIR (Ext.1) on 5.6.07 at around 11.45 PM at Mancheswar PS alleging there in that on the same night at around 8 pm while he along with two elder brothers namely Raghunath Sahu (PW.2) and Biswanath Sahu (PW.3) were proceeding to Hanspal square to purchase articles. On their way near at Highway wine foreign shop the accused persons jointly abused at them in obscene words attacked them with lathi, sword, Bhujali, & Katari. It is further alleged by him that accused Aju assaulted him (PW.1) that a sword with intents to kill him and due to said assault he sustained injuries on his head and at his back. On the basis of said written FIR (Ext.1) Mancheswar PS Case No.131 dtd. 5.6.07 was registered against the accused persons U/Ss. 294,324,307,506/34 IPC and investigation was undertaken there of. In the course of investigation police sent the injured PW.1 for his medical examination. After examining the informant and other witnesses, visited the spot, seized the weapon of the offence like sword and bamboo lathi from the spot in presence of the witnesses and prepared the seizure list. After completion of investigation police submitted charge sheet against the above named accused persons U/s.341,294,323,307,506/34 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 5.6.07 at 8 pm at Hanspal square the accused persons, in furtherance of their common intention, had wrongfully restrained PW.1,2 and 3 ?
- ii) Whether on the alleged date, at time and at place the accused persons, in furtherance of their common intention, caused annoyance to others by using obscene words towards pw.1 to 3 in public place. ?
- iii) Whether on the alleged date, at time and at place the accused persons, in furtherance of their common intention, voluntarily caused hurt to Pws.2 & 3 ?
- Iv) Whether on the alleged date, at time and at place the accused persons, in furtherance of their common intention, attempted to commit murder to PW.1?
- V) Whether on the alleged date, at time and at place the accused persons, in furtherance of their common intention, had given threat to PW.1 to 3 with intents to alarm their person ?

5. To establish its case prosecution examined 4 witnesses, in all. PW.1 is the informant as well as the injured. Pw.2 and 3 are his brothers who alleged to be the injured in this case. PW.4 is alleged to be a witness to the seizure with regard to the seizure of weapon of the offence. On the other hand, defence adduced no evidence on its side.

6. PW.1 is the informant as well as the injured in this case. His evidence goes to show that about six years back from the date of his deposition i.e 28.10.13 he has lodged a written FIR(Ext.1) at Mancheswar PS but due to lapse of time, does not recollect for what allegations and against whom he had lodged Ext.1. Prosecution declared him hostile and fails to elicit nothing from his mouth against the accused persons. PW.2 and 3 are two brothers of PW.1. According to the case of the prosecutions PW.2 and 3 are the eye witnesses to the occurrence as well as the injured in this case. Though these two witnesses in their examination in chief have supported the prosecutions with regard to the incident but they have not implicated the present accused persons with the alleged incident. In cross examination they have categorically admitted that the present accused persons had no point of time had attacked them on their brother (PW.1) and the accused persons were not responsible for injuries said to have been received by PW.1 on his persons. PW.4 is alleged to be one of the witness to the seizure in respect of the seizure of weapon of the offences in this case but this witness in his evidence deposed that nothing has been seized by the police in his persons but at the instance of police he had put the signature (Ext.2) on a plain paper. Besides the evidence of Pws.1 to 4 prosecution has no other evidence in this case. Reading the entire evidence led by the prosecution it is clear that none of the prosecution witnesses have implicated the accused persons with the commission of the alleged crime. Considering the prosecutions evidence available in the record I am of the opinion that prosecution has failed to establish its case against the accused persons and as such the accused persons are entitled to be acquitted.

In the result, I hold the accused persons are not guilty U/Ss.341,294,323,307,506/34 IPC and acquit them therefrom U/s.235(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 seized articles like sword and bamboo lathi be destroyed four months after the

appeal period is over, if there is no appeal.

AC.J.M-ASJ,BBSR

The judgment is dictated,corrected and pronounced by me in the open court today  
i.e. on 4<sup>th</sup> 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            Rabindra Ku. Sahoo  
P.w.2            Raghunath Sahoo  
P.w.3            Biswanath Sahoo  
P.w.4            Jhulendra Samal

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            Signature of PW.4 in Seizure list.

List of exhibits marked for defence.

N i l.

List of M.Os. Marked by prosecution

Nil

AC.J.M-ASJ,BBSR