

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.6/295/213/14

Code No.4009/14

(Arising out of G.R. Case No.4712/12 corresponding to CSPur PS Case No.280/12)

S T A T E

-Versus-

Tutu Behera @ Naik, aged about 36 years, S/o Prafulla Naik,
At- Sitanagar Basti,Niladri Vihar, PS: CSPur-, Dist: Khurda.

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Accused person.

OFFENCE U/S.341,294,323,325,307,506 I.P.C

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

Counsel for the defence : Sri R.K.Khuntia & Associates, Advs, BBSR.

Date of argument: 12.8.14

Date of judgment: 13.8.14

J U D G M E N T

1. In this case the accused named above stands charged for commission of offences punishable U/s.341,294,323,325,307,506 IPC.

2. Shortly stated, the prosecution case is that :

Ambarish Pati p.w. 3 lodged a written FIR Ext. 2 on 29.12.12 at 10 A.M at ChandrasekharpurP.S. ,BBSR alleging therein that the accused Tutu Behera @ Naik who had taken contract work , of his house, situates at Sitanagar Basti Niladri vihar on 28.12.12 night Friday at around 11 P.M abused him in obscene words also assaulted him with the grip of sword causing fracture injury on his left shoulder. Besides that the accused had also given threat to finish him away. The accused with an intention to finish him away had also assaulted with the sword but luckily he got saved sustaining fracture injury on his left shoulder . He raised shout for help. When nearby people came to the occurrence spot, the accused went away carrying with sword . On the basis of the said FIR ChandrasekharpurP.S.Case no. 280 dt. 29.12.12

was registered against the accused named above u/s.341,294,323,325,307,506/34 I.P.C. And the case was entrusted to Sri Basudeb Das , ASI of police for investigation. During the course of investigation the I.O of this case examined the informant and other witnesses , send the injury requisition in favour of injured p.w. 3 to KIMS hospital on 28.12.12 for medical examination , visited the spot , prepared the spot map , received the injury report of the injured, arrested the accused &forwarded him to the court . After completion of investigation submitted charge sheet against the accused u/s. 341,294,323,325,307,506/34 I.P.C to face his trial in the court of law. The case was committed to the court of sessions and subsequently this case was transferred to this court for 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 28.12.12 night at around 12 P.M the accused wrongfully restrained Ambarish Pati (pw.3) in front of his house located at Sitanath Nagar Basti, Niladri Vihar, BBSR ?

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

iii) Whether on the alleged date, time and at place the accused had caused hurt to Ambarish Pati ?

iv) Whether on the alleged date, time and at place the accused voluntarily caused grievous hurt to Ambarish Pati ?

V) Whether on the alleged date, time and at place the accused had attempted to commit murder to Ambarish Pati by inflicting injury by sword ?

vi) Whether on the alleged date, time and at place the accused had given threat to Ambarish Pati (pw.3) with intention to cause alarm to his person ?

5. To establish its case, prosecution has examined as many as six witnesses including the informant-injured (pw.3) . The doctor who had clinically examined the injured pw.3 and pw.2 and the IO (pw.6) of this case. PW.2 ,3,5 are alleged to be the eye witnesses to the occurrence. On the other hand defence has adduced no evidence from its side.

6. It is not necessary to discuss about the evidence of the doctor (pw.2) and the injury report (Ext.1/1) because defence has no dispute regarding the injuries found by the doctor (pw.2) on the persons of pw.3 mere because defence has no dispute regarding the injuries as found by the doctor on the persons of pw.3 it can not be said

that the accused was the author of the said injury sustained by pw.3 . According to the prosecution due to assault by the accused pw.3 sustained injuries on his persons as mentioned by the doctor (pw.2) of his injury report. On the other hand the accused denied to have his complicity with the alleged incident. Now the question comes for consideration as to whether the accused was responsible for the injuries sustained by pw.3 on his person. Pw.3 is the injured himself, who in his examination in chief he has stated that on 28.12.12 night at 11 pm there was exchange of hurt words in between him and the accused in front of his house situated at Sitanagar Basti, Niladri Vihar, BBSR. In the course of said quarrel he had sustained fracture injury on his left shoulder. The aforesaid evidence of pw.3 does not disclose as to how he sustained fracture injury on his left hand. In cross examination this witness has clarified that as it was night he accidentally fell down and sustained fracture injuries on his left hand. This witness has categorically stated in his cross examination that the accused was not responsible for his said injury. He has also admitted that the accused had committed no overt act in the course of the quarrel and the quarrel was limited only to exchange of hurt words. So reading the sum total evidence of pw.3 it is clear that the injured (pw.3) has not made the accused responsible for the injuries sustained by him on his person. The evidence of pw.1 goes to show that the accused had sustained fracture injury in his person but his evidence does not disclose as to how he had sustained injuries. The evidence of pw.4 and 5 shows that pw.3 had sustained injuries due to accidental fall on the ground. It is also seen from the evidence of pw.5 that on his query pw.3 had stated before him that he had sustained fracture injury on his person due to accidental fall on the ground. Neither the injured pw.3 nor the other witnesses (pw.2,3 & 5) have implicated the accused for causing any injury on the person of pw.3. The evidence of pw.3 also does not disclose that during the course quarrel the accused had attempted to murder him. Besides that neither the informant himself nor the other witnesses to the occurrence (pw.2 to 5) had stated anything regarding the offence U/s.341/294/506 IPC against the accused. Pws. 2 & 6 were not the witnesses to the occurrence. Considering the entire prosecution evidence available on record I am of the opinion that no offence as alleged by the prosecution against the accused is made out from the prosecution evidence. Hence the prosecution has failed to establish its case against the accused and as such the accused is entitled to be acquitted from the charges leveled against him.

In the result, I hold the accused Tutu Behera is not guilty for commission of offence U/s.341,294,323,325,307,506 IPC and as such, I 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 judgment is dictated,corrected and pronounced by me in the open court today i.e. on 13th 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 Sadasiba Dalei.
P.w.2 Dr. Nanda Kishore Bal.
P.w.3 Ambarish Pati.
P.W.4 Karunakar Jena,
P.W.5 Ranjan Padhiary.
P.W.6 Basudeb Das.

List of D.ws.examined for defence.

None.

List of exhibits marked for prosecution.

Ext.1 Injury requisition dt. 26.12.12 of injured Ambarish Pati
Ext.1/1 Medical examination report.
Ext 1/2 Signature of p.w. 2 on Ext. 1/1
Ext. 2 Written FIR dated 29.12.12
Ext. 2/1 Signature of pw.3 in Ext.2
Ext.2/2 Endorsement and signature of R.N.Satapathy I.I.C.in Ext. 2
Ext.2/3 Formal FIR.
Ext2/4 Signature of R.N.Satapathy. In Ext. 2/3
Ext.1/3 Signature of pw.6 on Ext1
Ext.3 Spot map.
Ext3/1 Signature of p.w.6 in Ext. 3

List of exhibits marked for defence.

N i l.

List of M.Os.

N i l.

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

