

IN THE COURT OF THE ADDL. SESSIONS JUDGE-CUM-SPECIAL JUDGE(CBI), COURT NO.IV,BHUBANESWAR.

P R E S E N T : Shri S.K.Mishra, O.S.J.S.,
Addl. Sessions Judge-cum-
Special Judge (CBI), Court No.IV,
Bhubaneswar.

C.T.No.227 of 2015

(Arising out of G.R. Case No.574 of 2015
corresponding to Balipatna P.S.Case No.110
dt.8.6.2015).

S T A T E Prosecution

-Versus-

1. Bunia @ Kunjabihari Behera, aged about 21 years,
S/o.Dilia @ Durga Behera, resident of
Village: Sibaberhampur, Banamalipur,
PS:Baliapatna, District-Khurda.
..... Accused.
(ON JAIL)
2. Lulu@Nrusingh Charan Behera, aged about 33 years,
S/o.Chakradhar Behera, resident of
Village: Sibaberhampur, Banamalipur,
PS:Baliapatna, District-Khurda.
.... Accused.
(ON BAIL).

For the Prosecution : Sri S.K.Barik, Addl.P.P.

For accused persons : Sri S.Ray &
Associates,Advocates.

Date of argument : 05.3.2016

Date of judgment : 10.3.2016

Offences under Sections 147, 148, 341/149, 294/149,
323/149, 307/149, 302/149 of IPC.

J U D G M E N T

1. Both the accused persons stood charged for committing the offences punishable u/s. 147, 148, 341/149, 294/149, 323/149, 307/149, 302/149 of IPC.
2. Briefly stated the prosecution case is that on 7.6.2015 at about 2 AM night while the family members of the informant were sleeping, our neighbour Lulu Behera,

S/o.Chakradhar Behera abused in obscene language near the “Dandaduar” of the informant. It is further alleged that at that time while Bijay Behera (Dedhasura of the informant), nephews Gyanaranjan Behera, Shyam Sundar Behera and Suryakanta Behera (the husband of the informant) were trying to convince to Lulu Behera, by that time Lulu Behera assaulted the husband of the informant Suryakanta Behera by means of an axe and Suryakanta fell down on the ground. Thereafter, Dilia Behera, Gulia Behera, Antaryami Behera, Bunia Behera and Kanha Behera assaulted Bijay Behera, Gyanendra Behera, Shyam Sundar Behera by means of Katari for which Bijay Behera sustained grievous injuries on his head and right hand and Suryakanta was shifted to hospital by ambulance where the doctor declared him dead. Basing on the report of the informant, a case u/s. 147, 148, 341, 294, 323, 307, 302/149 of IPC was registered and investigation was taken up. During investigation, the informant and the witnesses were examined. The IO visited the spot. The injured persons were medically examined on police requisition. The accused persons were arrested and forwarded to the Court. After completion of investigation, charge-sheet u/s. 147, 148, 341, 294, 323, 307, 302/149 of IPC was submitted against all the accused persons. The learned JMFC (O), Bhubaneswar committed the present two accused persons in the Court of Sessions. Charge for the offences, as above mentioned, was framed against the present two accused persons.

3. Defence plea is one of complete denial and false implication.

4. Prosecution has examined 8(eight) witnesses whereas the defence has examined none.

5. The points for determination are:

(i) Whether on 7/8.6.2015 at about 2 AM in the "Dandaduar" of the informant at Village-Sibabrahmapur, Banamalipur the present accused persons along with accused persons Dilia Behera, Gulia Behera, Antaryami Behera and Kanha Behera were members of an unlawful assembly and in prosecution of the common object of the said assembly, committed an offence of rioting?

(ii) Whether on the above date, time and place, the present accused persons along with above named accused persons were members of an unlawful assembly and were at the time armed with axe, "Tada" and "Katari"?

(iii) Whether on the above date, time and place the present accused persons along with the above named accused persons were members of an unlawful assembly and in prosecution of the common object of the said assembly, all the accused persons wrongfully restrained Bijay, Suryakanta @ Bhima, Gyana and Shyam Sundar?

(iv) Whether on the above date, time and place the present accused persons along with above named accused persons were members of an unlawful assembly and in prosecution of the common object of the said assembly, accused Lulu uttered obscene language near a public place causing annoyance to others?

(v) Whether on the above date, time and place the present accused persons along with above named accused persons were members of an unlawful assembly and in prosecution of the common object of the said assembly, all the accused persons voluntarily caused hurt to Bijay, Suryakanta @ Bhima, Gyana and Shyam Sundar?

(vi) Whether on the above date, time and place the present accused persons along with above named accused persons were members of an unlawful assembly and in prosecution of the common object of the said assembly, all the accused persons attacked Bijay, Suryakanta @ Bhima, Gyana and Shyam Sundar on different parts of their bodies causing grievous injuries by means of axe, Tada and Katari with such intention and under such circumstances by that act, if they by that act, had caused their death, they would be guilty of murder?

(vii) Whether on the above date, time and place the present accused persons along with above named accused persons were members of an unlawful assembly and in prosecution of the common object of the said assembly, all the accused persons

committed murder intentionally causing the death of Suryakanta Behera @ Bhima?

6. PW-4 is the informant. PWs-1, 3, 5 and 7 are the family members as well as the relative of the informant. PWs-1, 3 and 5 have been examined as eye witnesses to the occurrence. It is the evidence of PW-1 that he is the elder brother of the deceased Bhima @ Suryakanta Behera. According to him, his brother sustained bleeding injuries on his head due to one quarrel that took place in their house at 2 AM on the relevant date and the deceased succumbed the injuries in Capital Hospital, Bhubaneswar. He has further stated that he has not witnessed the occurrence. Similarly, PWs-2 and 3 have corroborated the evidence of PW-1 with regard to the injuries and death of Bhima, but they stated that they have not witnessed the said occurrence. PW-4 the informant, who is the wife of deceased Bhima has stated that on 8.6.2015 she lodged the FIR vide Ext.2 at Balipatna Police Station. According to her, there was shouting in their Danda and on hearing the same, her husband Bhima @ Suryakanta Behera came out from the house and when she went to the spot, she found that her husband had sustained bleeding injury on his head and was shifted to Capital Hospital, Bhubaneswar where her husband died. She has further stated that she does not know anything else about this case. She has not stated anything implicating the present two accused persons in the alleged crime. Rather, during cross-examination she has stated that she lodged FIR Ext.2 which has been prepared by her as per the dictation of the police officer. She has also failed to say who attacked her husband.

7. PW-5 (the injured) has stated that the occurrence took place in front of their house at about 12 in the midnight and he sustained head injury, but he cannot say

how he sustained such head injury. He has also failed to say how the deceased Bhima @ Suryakanta Behera died. During cross-examination he has stated that nothing was seized in his presence and police has taken his signatures forcibly on blank papers vide Exts.6/1, 7/1, 8/1 and 9/1.

Similarly, PW-7 has not supported the case of the prosecution and in his evidence stated that he was ignorant about the death of deceased.

8. PW-6 the seizure witness in his evidence has stated that on 8.6.2015 at 6.35 PM in connection with this case, on production by Constable Tipu Marandi, one blue and black colour Lungi, wooden Mali and steel ring were seized by the then IIC Sri Atanu Kumar Rout, in his presence as per seizure list vide Ext.4.

From the evidences of PWs-1 to 5 and 7, though it has been proved that the deceased has died due to injury sustained on his head, but the above witnesses have not supported the case of prosecution implicating the present two accused persons in the alleged crime. The prosecution though the prosecution has asked leading questions to the said witnesses u/s.154 of Evidence Act, but nothing has been elicited from their mouth to implicate the present two accused persons, as author of crime.

9. Now, the only witness left PW-8, who is the Investigating Officer. According to him, he registered this case, took up investigation, visited the spot with scientific team, seized the blood stained earth and sample earth, wearing apparels of the deceased, examined the informant and other witnesses and prepared spot map vide Ext.11. He has stated that on 8.6.2015 at 8.40 AM he made search on the house of accused Gulia @ Padma Charan Behera and seized four lathis and one blood stained blue colour full shirt as per seizure list vide Ext.6 and thereafter he

conducted inquest over the deadbody of deceased Suryakanta Behera @ Bhima at Capital Hospital, Bhubaneswar as per inquest report vide Ext.1. He has also stated that he had made written query vide Ext.13 to the concerned doctor who had conducted post mortem examination over the dead body of deceased. His evidence does not find support by evidence of PWs-1 to 5 and 7 who claimed to be the eye witnesses to the occurrence.

10. The most vital point of investigation by the Investigating Officer is leading to discovery. According to PW-8, on 9.6.2015 he apprehended accused Bunia @ Kunja Bihari Behera and while on police custody, he led him to the place of discovery of the weapon of offence i.e. one iron Katari, which he had kept concealed below one heap of straw inside his Bari and he seized the same vide seizure list Ext.7/2 and he (PW-8) recorded the statement u/s.27 of the Evidence Act vide Ext.9/2 and on the same day i.e. on 9.5.2015 he arrested the accused Bunia and seized his wearing apparels i.e. one green colour short pant, one grey colour full shirt and one blue-red colour baniyan as per seizure list Ext.15 and forwarded him to the Court.

11. In cross-examination PW-8 has stated that he has not mentioned in Ext.9/2 or Ext.7/2 if there was any blood stain on the iron Katari and he has also not marked any blood stained earth or blood stained straw at the place of seizure. PW-8 has further stated that he has not mentioned in Ext.9/2 if there was any blood stain on the iron Katari. It has been brought out during cross-examination of PW-8 the IO that one ASI Sri Mohanty has written the contents of Ext.9/2, but the same has not been mentioned in the said document by PW-8. PW-8 has also not taken the signature of ASI Sri Mohanty on Ext.7/2 and Ext.9/2. He has also not recorded the statement of ASI Sri Mohanty and has not

cited him as a witness in the charge-sheet, for the reason best known to the IO. In fact, he has not assigned any reason for the same. None of the prosecution witnesses except the IO, have stated that the iron Katari was used as weapon of offence, for the purpose of committing the murder of question and that the iron Katari was used by the present accused persons for committing the said murder. In the absence of evidence to connect the said iron Katari with the alleged murder, since no blood stain was found by the IO at the time of its seizure. Therefore, the said seizure, even if for the time being accepted as proof for the sake of argument, still then, it does not connect the accused persons with the alleged murder. Therefore, the submission of the learned defence counsel that the said leading to discovery and seizure of iron Katari, do not come within the purview of Section 27 of Evidence Act, since the accused Bunia @ Kunja Bihari Behera was not arrested prior to the same, need not be given any importance. It is no more res-integra that for the purpose of Section 27 of Evidence Act, the accused need not be arrested prior to the said leading to discovery while in police custody. Therefore, the evidence of the Investigating Officer regarding leading to discovery is doubtful. There are some discrepancies in the evidence of PW-8 with the evidence of other witnesses. The evidence of the Investigating Officer is not supported by the evidence of other witnesses, who have been examined from the side of the prosecution.

12. In the present case, the accused persons were specifically named in the FIR to have committed the murder in question. The IO (PW-8) left the police station after registration of the FIR and took the accused into custody, on his way to Village-Sibaberhampur. In the said circumstances, this Court found that the accused was in

protective custody of police for the purpose of Section 27 of Evidence Act. However, in view of the material discrepancies found in the evidence of prosecution witnesses and specific evidence of PW-8, no reliance can safely be placed on the sole discrepant statement of PW-8 for the purpose of connecting the iron Katari with the murder in question and with the accused persons.

13. In fact, PWs-1, 2, 3, 4, 5 and 7 have not stated regarding presence of the present two accused persons at the spot at the time of the alleged occurrence. Their evidence are completely silent regarding commission of murder of Bhima @ Suryakanta Behera by the present two accused persons. None of them have deposed regarding any assault on PWs-1, 3 and 5. The prosecution witnesses have not stated that the present two accused persons had uttered obscene language causing annoyance to others and they restrained PWs-1, 3 and 5 from proceeding in any particular direction, to which they had right to go. Nothing has been elicited from their mouth implicating the present two accused persons in the alleged offences. Although PWs-1, 2, 3, 4, 5 and 7 were asked leading questions by the prosecution u/s.154 Evidence Act, but nothing has been elicited from them to implicate the present two accused persons in connection with this case.

14. Therefore, after analyzing the evidence on record and for the reasons discussed above, this Court finds that the prosecution has failed to implicate the above named two accused persons for commission of the alleged offences punishable under Sections- 147, 148, 341/149, 294/149, 323/149, 307/149, 302/149 of IPC.

15. In the result, the present two accused persons are found not guilty of the offences punishable under Sections 147, 148, 341/149, 294/149, 323/149, 307/149, 302/149 of

IPC. They are acquitted u/s.235(1) of Cr.P.C. and are set at liberty. The bail bonds are cancelled and sureties are discharged. No order regarding disposal of any material object is passed, since split up record is pending against other accused persons.

Enter this case as mistake of facts.

Addl. Sessions Judge-cum- Special Judge
(CBI), Court No.IV, Bhubaneswar.

The judgment is typed to my dictation and corrected by me and pronounced to-day on this 10th day of March, 2016 given under my hand and seal of this Court.

Addl. Sessions Judge-cum- Special Judge
(CBI), Court No.IV, Bhubaneswar.

List of witnesses examined for the prosecution :

PW-1	Bijay Behera.
PW-2	Biswanath Behera.
PW-3	Shyama Sundar Behera.
PW-4	Smt. Kabita Behera.
PW-5	Gyanendra Behera.
PW-6	Antaryami Sethi.
PW-7	Duryodhan Behera.
PW-8	Atanu Kumar Rout.

List of witnesses examined for the defence :-
Nil.

List of exhibits marked for the prosecution :-

Ext.1	Inquest Report.
Ext.1/1	Signature of PW-1 in Ext.1.
Ext.2	FIR.
Ext.2/1	Signature of PW-4 in Ext.2.
Ext.3	Formal FIR.
Ext.3/1	Signature of PW-5 in Ext.3.
Ext.4	Seizure list.
Ext.4/1	Signature of PW-6 in Ext.4.
Ext.5	Signature of PW-7 in deadbody challan.
Ext.1/2	Signature of PW-7 in Ext.1.
Ext.6	Signature of PW-3 on seizure list.

Ext.7	Signature of PW-3 on seizure list.
Ext.8	Signature of PW-3 on seizure list.
Ext.9	Signature of PW-3 on seizure list.
Ext.6/1	Signature of PW-5 on seizure list.
Ext.7/1	Signature of PW-5 on seizure list.
Ext.8/1	Signature of PW-5 on seizure list.
Ext.9/1	Signature of PW-5 on seizure list.
Ext.10	Post mortem report (with admission by both sides)
Ext.2/2	Endorsement and signature of PW-8 in Ext.2.
Ext.3/2	Endorsement and signature of PW-8 in Ext.3.
Ext.11	Spot map.
Ext.11/1	Signature of PW-8 in Ext.11.
Ext.8/2	Signature of PW-8 in Ext.8.
Ext.4/2	Signature of PW-8 in Ext.4.
Ext.6/2	Signature of PW-8 in Ext.6.
Ext.1/3	Signature of PW-8 on Ext.1.
Ext.5/1	Signature of PW-8 on Ext.5.
Ext.12	Injury requisition in respect of Bijay Behera.
Ext.12/1	Signature of PW-8 on Ext.12.
Ext.13	Written query made to concerned doctor (two sheets).
Ext.13/1	Signature of PW-8 in Ext.13.
Ext.13/2	Opinion of doctor in Ext.13.
Ext.7/2	Seizure list.
Ext.7/3	Signature of PW-8 in Ext.7/2.
Ext.9/2	Statement u/s.27 of Evidence Act of Bunia @Kunja Bihari Behera.
Ext.14	Requisition of medical examination of Bunia.
Ext.14/1	Signature of PW-8 in Ext.14.
Ext.15	Seizure list.
Ext.15/1	Signature of PW-8 on Ext.15.
Ext.16	Forwarding of exhibits to SFSL by the JMFC(O), BBSR.
Ext.17	Seizure list.
Ext.17/1	Signature of PW-8 on Ext.17.
Ext.18	Viscera Report.

List of exhibits marked for the defence :-

Nil.

List of M.Os. marked for the prosecution :-

Nil.

List of M.Os. marked for the defence :-

Nil.

Addl. Sessions Judge-cum- Special Judge
(CBI), Court No.IV, Bhubaneswar.

