

IN THE COURT OF THE CHIEF JUDICIAL, MAGISTRATE-CUM-
ASSISTANT SESSIONS JUDGE, KHURDA, CIRCUIT, AT-
BHUBANESWAR

P R E S E N T:

Dr. P.M.Samal, LL.,M,Ph.D, (Law)

Chief Judicial Magistrate -Cum-
Assistant Sessions Judge Khurda.

Criminal Trial NO.39/159 OF 2013

(Arising out of G.R. Case No. 188/2013 corresponding to Jatni PS
Case No.71 dated. 29.03.2013 Committed by JMFC (O),
Bhubaneswar on 18.06.2013).

S T A T E

-V E R S U S-

Nandu @ Ajaya Nayak, aged about 21 years

S/o. Raju Nayak

At-Gandhinagar, Harijansahi, PS-Jatni

Dist-Khurda

.....

Accused person

Date of argument 19.11.2014

Date of Judgment 26.11.2014

Under Section. 307 I.P.C.

Counsel for the StateMrs. B.Mohanty (APP.)

Counsel for the defence..... Sutapa Dhar

J U D G M E N T

1. The above named accused has stood his trial on being charged for
the offence punishable U/s.307 IPC only.

2. A brief fact of the prosecution case is unfolded hereunder:-

The informant's nephew namely Trinath Samal owned a stationary
cabin shop near new bus stand at Sardar Patel Marg Jatni. On 27.03.2013

at about 11 P.M., when he came outside of his shop to urinate, the accused dealt him axe blows on his neck, belly, back and other parts causing profuse bleeding injuries and became unconscious. After hearing the noise when the nearby shop owners arrived there, the accused fled from the spot leaving the said axe having broken handle. The witnesses shifted him to the Jatni government hospital for his preliminary treatment, then to Khurda Hospital and thereafter referred to SCB Medical College and Hospital for better treatment.

So, the informant lodged written report before IIC Jatni P.S. who registered the case and directed for investigation. During course of the investigation the IO visited the spot, prepared the spot map, seized the weapon of offence along with blood stained cloth from the injured, arrested the accused and forwarded him to court. After completion of investigation he submitted the chargesheet against the accused under aforementioned section of law occasioning the present trial.

3. The accused's plea is total denial to the prosecution allegation. During his examination U/s. 313 (1)(b) Cr.P.C. the accused took further plea of killing his elder brother by informant, injured and their group and foisted a false case against him.

4. In view of the pleas taken by the parties to the case it is became obligatory on my part to give findings on the sole point for determination as follows:

(i) Whether the accused on 27.03.2013 at about 11 P.M. Near New Bus Stand Sardar Patel Marg, Jatni assaulted the informant's nephew (Bhanaja) by means of an axe causing profuse bleeding injuries on his neck, belly, back and other parts of body with intention and knowledge to cause his death?

5. The prosecution has examined all total six witnesses to prop up the allegation made against the accused, of whom P.W.1 is the informant, P.W.2 and 6 are the witnesses to the occurrence as well as seizure, P.W.3 is the injured, P.W.4 is the doctor, P.W.5 is the IO apart from the documents proved Exts. 1 to 7. But the accused did not prefer to adduce any evidence on his behalf to substantiate his plea.

6. At the outset, the prosecution has made it explicit that on 27.03.2013 at about 11 P.M. while the informant's nephew came outside for urinate from his stationary shop situates near new bus stands Sardar Patel Marg, Jatni, the accused dealt axe blows to him causing bleeding injuries on various part of his body. It is also the statement of the injured (P.W.3) who is a vital witness that he closed his shop at the market and went to a distance to pass urine on the alleged night and at the spot, the accused came from his behind and assaulted him by means of an axe causing bleeding injuries on his neck near the shoulder, left side of his belly and to his back side. When he shouted the witnesses arrived at the spot for which the accused fled away. The witnesses Meghanad Behera who is examined in this case as P.W.2 took him to hospital for treatment. It is next stated that he was shifted to Khurda hospital, then to Bhubaneswar and Cuttack for treatment. P.W.2 deposed on oath that on the alleged night he saw the accused assaulting the injured by means of an axe causing bleeding injuries on his person in the market area of Ramachandrapur and the accused fled from the spot after assaulting and he took him to hospital for treatment. He informed the matter to the informant and subsequently the injured was referred to cuttack for treatment. In his presence police seized one axe with blood stains vide a seizure list Ext.2 and Ext.2/1 is signature therein. Another witness to the occurrence P.W.6 has also deposed that his shop situates near to the shop

of injured and in the alleged night he came there after hearing noise and saw the accused assaulting the injured by means of a Tangia and at the time he reached, the accused left the place. Thereafter the injured was shifted to hospital by him.

7. The informant of this case P.W.1 who is none else but the own uncle of the injured has stated that on 27.03.2013 at about 11 P.M. he received information from one Meghanad Behera (P.W.2) that his sister's son namely Trinath Samal (injured) P.W.3 has been brutally assaulted and P.W.2 already taken him to the hospital. Then he went to Khurda hospital where the injured was referred to Capital Hospital, Bhubaneswar and then to SCB Medical College and Hospital, Cuttack. So on 29.03.2013 he lodged the FIR at police station marked Ext.1 which has been proved through his signature vide Ext.1/1.

8. A doctor P.W.4, who examined the injured through police requisition and noticed the injuries as follow:

- (i) a sharp cutting with bleeding 3" X 1"X1" right side of middle of neck
- (ii) A sharp cutting with bleeding 3"X1"X1" left side of abdomen,6" below nipple
- (iii) A sharp cutting with bleeding 1 ½ " X 1" X ½ " middle of left arm on
- (iv) A sharp cutting with bleeding 2 ½ " X ½ "X ½ " Right side of back 5" below low sub-scapular region.

Opinion- May be with hard and sharp object within four hours of examination.

The injury report is marked as Ext.3 and Ext.3/1 is his signature.

9. As per query made by the IO to note the injuries inflicted in the body of the injured can be caused by the weapon of offence produced and the injuries inflicted therein are sufficient to cause death of a person or not. In answering the same, the doctor P.W.4 submitted a separate report vide Ext.4 with opinion as follows:

1. This type of injuries may be caused inflicted by this type of hard and object.
2. This type of injuries may attribute as a possible cause of death if not managed properly.

10. From the deposed testimony of the IO PW.5 it is manifest that during investigation he prepared a spot map Ext.5, seized the blood stained cloth and weapon of offence on production of the informant in presence of the witnesses vide Ext.2 and issue injury requisition for treatment of the injured to the hospital. Further he seized the bed head ticket of the injured at SCB Medical College,Cuttack through a seizure list Ext.6 and Ext.6/1 is signature therein. Subsequently the IO left the seized bed head ticket through zimanama of the hospital authority through a zimanama Ext.7.

11. This being the state of evidence adduced on behalf of the prosecution, I feel it expedient to place here the argument lead by the parties to the case.

12. It is the submission of the learned counsel for the accused that the delay in submitting the FIR by the informant has not been properly explained by the prosecution. The name of the witnesses like P.W.2 and 6 i.e. Meghanada Behera and Krupasindhu Behera respectively are not cited in the body of the FIR which cause grave doubt on the veracity of the facts deposed. The weapon of the offence has not been produced in the court for which it caused grave prejudice to the accused to confront the witness as well as the injured to know the truth. The IO P.W.5 has not noticed any mark of violence at the spot and no blood spot reflected at the spot map where the incident alleged to be taken place. On these backdrops, it is prayed to acquit the accused from the charge levelled against him U/s. 307 IPC as he has been falsely implicated in this case.

13. While denouncing such claim of the learned counsel for the accused, the learned Addl.PP, inter alia contended that the injuries were so serious in nature, first of all the witnesses took utmost care to save the life of injured (P.W.3) by shifting from one hospital to another and they finally reached at SCB Medical college, naturally, the delay of 1 and ½ day in lodging the FIR caused. Thus, the delay is well explained. It is next addressed by the learned Addl. PP that the name of the witnesses P.Ws. 2 and 6 though not mentioned in the body of the FIR but they have categorically stated about arriving at the spot at the time of incident and shifting the injured to the hospital.

14. With regard to the name of the witnesses not mentioned in the body of the FIR, it may be placed here that the minutes detailed need not be mentioned in the FIR. More over the informant is a post occurrence witness and after gathering information, he lodged the report while the injured was under treatment at the hospital. Therefore it is obvious on the part of informant to miss the name of the witnesses.

15. The learned Addl. PP allured my attention to the report of the doctor marked Ext.4 that the weapon of offence has already been shown to the doctor who opined that the injuries inflicted on the body of the injured are possible by it and non-production of the same does not affect the root of the case. It is next addressed by the learned Addl. PP that the FIR was lodged one and half day later to the incident, it may not be possible to see any mark of violence or any blood stain mark at the spot and such an argument led by the learned defence counsel has no force. Further the learned Addl. PP argued the case taking me through corridors of the evidence and point out as to how prosecution has established the charge.

16. Criminal jurisprudence says that it is the bounden duty of the prosecution to prove the charge beyond all shadow of doubt. In the present case the injured (P.W.3) as well as the informant (P.W.1) and other witnesses to the occurrence, are vividly cross-examined by the learned counsel for the accused. Nothing has been surfaced during their cross examination to disbelieve their version with regard to the alleged incident. The informant in his cross-examination answering a question that posed to him by the learned defence counsel that the person namely Sanatan, Krupasindhu, Siba and Meghanada were present. Out of them Krupasindhu and Meghanada have been brought into the witness box as P.W.s 2 and 6 respectively. Both the witnesses have claimed their presence at the spot during the incident and even the P.W.2 in his cross-examination at Para-2 explained as to how he accompanied the informant to the police station and returned after lodging the FIR. The injured P.W.3 has affirmed that P.W.2 Meghanada had accompanied with him to the hospital. When P.Ws. 2 and 6 have supported the version of the injured P.W.3 who have claimed to be eye witnesses to the occurrence, there is nothing elicited as to why they say so against the accused in the absence of any sort of animosity with the accused. Absolutely there is no evidence to say that P.Ws. 2 and 6 have got enmity prior to the incident or thereafter, which compelled them to depose against the accused. Indubitably, the informant P.W.1 is related to injured as uncle and post occurrence witness but the evidence of the witnesses like P.Ws. 2 and 3 coupled with the testimony of injured himself lends full assurance to the prosecution case. The examination of the injured (P.W.3) after twelve days by the IO as pointed out by the learned defence counsel is no way affects the prosecution case. Therefore there is no infirmity and short comings noticed in the evidence of prosecution witnesses like P.Ws. 1,2,3

and 6 to disbelieve the case. In a nut shell, the entire case rests upon the evidence of the injured, the eye witnesses and the medical officer along with the IO. As it is apparent from the evidence of the medical officer (P.W.4) and his report Exts.3 and 4 that the injuries are proximate to the allegations made by the injured himself and there is nothing material available to say that the injuries caused to the injured otherwise. Therefore the evidence of the doctor P.W.4 lends extrinsic corroboration to the evidence of the injured P.W.3 and the witnesses too. More over the evidence of the Io P.W.5 provides much impetus to the claim of the injured who has been treated at the hospital and with regard to the seizure of bed head ticket at the SCB Medical College and Hospital vide Exts. 3 and 4 and left the same into the zima of hospital authority.

17. To prove an offence U/s.307 IPC the prosecution has to establish not only the accused assaulted informant's nephew (Bhanaja) by means of an axe causing hurt but also the accused being perpetrator of the crime had intention and knowledge to cause his death.

18. As it transpires from the material on record that the incident took place at about 11 P.M. And the accused came from his back and dealt axe blows to the neck, belly, back and other vital part of the body while he was alone and urinating near to his shop. The weapon of offence as alleged is an axe, appears to be dangerous one and the way the accused attacked, virtually, it establishes his intention and knowledge to cause death of the injured P.W.3.

19. An opportunity though given to the accused to adduce any evidence to substantiate his plea even taken during his examination U/s. 313 (1)(b) Cr.P.C., but the accused did not avail the same except suggesting to all the witnesses that he has been falsely implicated in this case. Simply mere saying by the accused without any legal proof it is not

safe at all to believe or consider such plea taken by the accused. Therefore, it is not sufficient at all to accept the argument led by the learned counsel for the accused that the injured might have sustained injuries due to fall on the ground where broken glasses were lying. We are alive to the proposition that it is the duty of the court to separate grains from the chaff. Rule of law as contemplated requires legal proof to establish any such plea taken by the parties to the case.

20. Scanning the evidence thoroughly and on appreciation of the evidence in the light of argument advanced from both the sides and findings given in preceding paragraphs this court finds clinching and incriminating evidence to establish all the ingredients required U/s.307 IPC. against the accused. There is no acceptable evidence to deny the injuries caused to the injured due to such assault by the accused rather the material available leads me to say that the accused is the author of the crime and all the material available on record connecting the links sufficient to hold the accused guilty of committing the offence U/s.307 IPC.

21. Thus I hold the accused is guilty of committing the offence U/s. 307 IPC and convicted him U/s. 235(2) Cr.P.C..

Here I prefer to switch over to the arena of hearing of question of sentence. When I so proposed, I must make it clear that the convict is not fit to get the benefit under the provisions of the PO Act. This is so, because the nature of the offence committed and the gravity of the injuries in the case, under the circumstances as emanating from the scenario of the occurrence do not permit my judicious conscience. Hence it is a fit case to pass punitive sentence after hearing on the proposed question of sentence.

Sd/-

CJM-Cum-A.S.J.- Khurda, circuit at Bhubaneswar

HEARING ON QUESTION OF SENTENCE

Heard the convict who is produced in custody and his learned counsel. The learned Addl. PP had also got a fair chance to submit for the prosecution on this score. The prayer for the learned defence counsel along with the convict is for leniency. Besides, such prayer nothing more is submitted. Having regard to the nature of the case, gravity of the offence and in the circumstance, the sentence to be passed must play a role of certain deterrence to prevent the convict from committing such offence in days ahead. Otherwise, the breaking of law time and again is imminent. The probability similar future occurrence cannot be ruled out. Therefore I feel if convict is sentenced to go rigorous imprisonment for four years U/s. 307 IPC the ends of justice will mete adequately. Hence it is so ordered:

The period of detention in custody as UTP be set off U/s. 428 Cr.P.C.

A Bed Head ticket left in zima of authority of SCB Medical college be remained as such and the zimanama Ext.7 be cancelled. The seized articles vide seizure list Ext.2 be destroyed four months after the appeal period is over or it shall follow the order of the appellate court in case of appeal.

Copy of the judgment be handed over to the convict as per law and rule.

Sd/-

CJM-Cum-A.S.J.- Khurda, circuit at Bhubaneswar

Dictated and corrected by me and pronounced in open Court today
i.e. 26th day of November, 2014, under my hand and seal of this court.

Sd/

CJM-Cum-A.S.J.- Khurda, circuit at Bhubaneswar.

List of witnesses examined on behalf of the prosecution

| | |
|--------|-------------------------|
| P.W.1 | Chakradhar Behera |
| P.W.2. | Meghanad Behera |
| P.W.3. | Trinath Sasmal |
| P.W.4 | Dr. Sanjaya Kishore Das |
| P.W.5 | Lingaraj Patra |
| P.W.6 | Krupasindhu Behera |

List of witnesses examined on behalf of the defence.

N o n e

List of documents Exhibited on behalf of the prosecution.

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|----------|-----------------------------|
| Ext.1 | FIR |
| Ext.1/1. | Signature of P.W.1 on Ext.1 |
| Ext.2 | Seizure list |
| Ext.2/1 | Signature of P.W.2 in Ext.2 |
| Ext.3 | Injury report |
| Ext.3/1 | Signature of P.W.4 in Ext.3 |
| Ext.4 | Report to quarry |
| Ext.4/1 | Signature of P.W.4 in Ext.4 |
| Ext.5 | Spot map |
| Ext.5/1 | Signature of P.W.5 in Ext.5 |
| Ext.2/2 | Signature of P.W.5 in Ext.2 |
| Ext.3/2 | Requisition |

| | |
|---------|-------------------------------|
| Ext.3/3 | Signature of P.W.5 in Ext.3/2 |
| Ext.6 | Seizure list |
| Ext.6/1 | Signature of P.W.5 in Ext.6 |
| Ext.7 | Zimanama |
| Ext.7/1 | Signature of P.W.5 in Ext.7 |

List of documents Exhibited on behalf of the defence.

N I L.

Sd/-

CJM-Cum-A.S.J.- Khurda. circuit At-Bhubaneswar