

IN THE COURT OF THE ADDL. SESSIONS JUDGE: BHUBANESWAR.

PRESENT:-

Sri I.K. Das LLB,  
Addl. Sessions Judge, Bhubaneswar.

Crl. Appeal No. 2/18 of 2012

(Arising out of judgment dtd. 12.4.12 in GR case No. 694/09  
passed by learned Special Judicial Magistrate, Khurda)

Benudhar Pradhan, aged about 31 years  
S/o: Late Nandakishore Pradhan, resident of  
Vill: Karadagadia, PS: Khurda Sadar, Dist: Khurda

... Appellant

Vrs.

State of Odisha

... Respondent.

Advocate for the appellant:- Sri P.R. Pattnaik & Associates  
Advocate for the Respondent- Sri N.R. Swain, Advocate

Date of argument- Dt.06.11.13

Date of judgment- Dt.19.11.13

### JUDGMENT

This appeal is directed against the judgment and order dtd. 12.4.2012 passed by learned Special Judicial Magistrate, Khurda in GR case No. 694/09 corresponding to TR No. 288/10 convicting the appellant u/s 323 IPC and sentencing him to undergo imprisonment for a period of 6 months simple imprisonment and to pay a fine of Rs.500/- i.d to undergo simple imprisonment for 15 days.

2. The prosecution case as revealed from the LCR in nutshell is that on 6.7.09, the informant of the case namely, Subash Chandra Mohanty while proceeding to Bhubaneswar from his house, the convict wrongfully restrained him on the way near Gobi sahi Chawk and compelled him to go into the village. The convict also abused him in filthy words and dealt blows with his belt causing injury on his head. He also strangulated him by pressing his neck. As the

informant raised hulla, some witnesses namely, Sarat Rout, Padmanav Rout, Pandari Rout and some other villagers intervened in the matter and saved him from the clutches of the convict. In the meantime, three other witnesses namely, Madhav Naik, Sarbeswar Biswal and Kailash Naik were also passing by that way and on the request of the informant they carried him to the PS and thereafter, to the hospital. The FIR being lodged before the IIC, Khurda PS on the same day at about 10.15 AM. Police registered PS case No. 58/09 u/s 341/323/294/506 IPC and took up investigation.

During the course of investigation, police visited the spot, examined witnesses, seized blood stained wearing apparels, obtained the injury report from Medical Officer and after completion of investigation, submitted charge sheet against the convict for the offence u/s 341/323/294/506 IPC.

3. Learned Special Judicial Magistrate, after taking up trial of the case, examined 11 prosecution witnesses and two defence witnesses. Recorded the statement of the accused u/s 313 Cr.P.C and passed judgment. In his judgment, learned lower Court after perusal of the material on record, came to the conclusion that prosecution failed to prove the offence u/s 341/294/506 IPC and therefore, acquitted the convict from the offences. But, the learned Court hold guilty to the convict u/s 323 IPC and sentenced him thereunder after convicting as stated above.

4. During the course of hearing the appeal, learned counsel for the appellant urged that the learned trial Court in his judgment was satisfied that both the informant and the convict were in inimical relation due to land dispute just before the occurrence and therefore, some corroboration should have been sought for to rely on the evidence of the victim. He also disbelieved the charges u/s 341/294/506 IPC on the face of available material. Moreover, the occurrence took place at village Chawk at about 9.30 AM and six witnesses have been named in the FIR who have been examined in the Court, but their evidence do not corroborate to the statement of the victim and therefore, offence u/s 323 IPC should not have been believed on the basis of such evidence.

5. On perusal of the judgment, I find the learned lower Court relied on the

decision reported in **Dalit Singh vrs. State of Punjab, AIR, 1953 page 364** wherein it has been held by the Hon'ble Apex Court that relation is not a factor to affect the credibility of witnesses. I have perused a decision reported in **2003 26 OCR (SC), 186 in the case of T. Venkata Saralu vrs. State of Andhra Pradesh and others**. Hon'ble Apex Court held that the testimony of interested witnesses cannot be rejected, if the testimony is otherwise trustworthy. Only safeguard in such case is that Court should be cautious in relying on such evidence. In view of such dictum of Hon'ble Supreme Court of India, let me test if the evidence of the injured and the witnesses examined on his behalf are trustworthy and believable to hold the conviction u/s 323 IPC.

6. The injured while examined himself as P.W.9 has stated that while the convict was assaulting him, Sarat, Pandari and Padmanav reached at the spot and protested the accused. But, the accused did not listen them and tried to assault again. It is very much essential to examine the evidence of these three witnesses as they are witnesses to the occurrence. Both Padmanav and Pandari while examined themselves as P.W.2 and P.W.3 respectively did not support the prosecution case in any manner. Prosecution declared them hostile and confronted some of their statement recorded by the IO u/s 161 Cr.P.C. But, surprisingly, the IO of the case while examined as P.W.11 was not examined by the prosecution by confronting the statement of hostile witnesses in order to believe that the witnesses are natural witnesses but suppressed the truth while deposing evidence in the Court. The other witness Sarat in his evidence said that by the time of his arrival he saw bleeding injury on the body of Subash, but he cannot say how such injury was caused to him. However, he said that by the time convict was standing with a belt in his hand. This being the evidence of three material witnesses, let me examine the evidence of three other witnesses who reached just after them. Madhav in his evidence said he saw the bleeding injury on the head of Subash, but he cannot say how such injury was caused. Kailash while examined as P.W.8 said that he saw both Subash and the convict were quarreling with each other due to land dispute between them. They also carried the injured to the PS and hospital. Sarbeswar (P.W.7) in his evidence said that he

saw Benudhar was assaulting to Subash with his belt and 40 to 50 persons were present at the spot. Thus, after examining the evidence of all the six witnesses I find excepting Sarbeswar, none other supported the prosecution case that the informant was assaulted by the convict with belt causing injury. In order to test the evidence of Sarbeswar, I have perused the evidence of other five witnesses who are stated to be witness to the occurrence. Madhav and Kailash reached at the spot alongwith Sarbeswar as per the prosecution case. But, Madhav and Kailash in their evidence did not say to have seen the occurrence i.e. assault by the convict to the informant. Moreover, they deposed in the Court that the occurrence was already over by the time of their arrival at the spot. Prior to Sarbeswar, Sarat, pandari and Padmanav reached at the spot and as per the prosecution case, they protested the accused while he was assaulting the informant. As stated above, Padmanav and Pandari did not support the prosecution case in any manner and Sarat stated in the Court that by the time of their arrival they saw bleeding injury on the body of Subash, but he cannot say how such injury was caused. There is no prosecution allegation that there was any further assault after arrival of these three witnesses. Admittedly, Sarbeswar reached at the spot later to Sarat. In view of such evidence of other witnesses it is hard to believe that the informant was assaulted by the convict in presence of Sarbeswar and he witnesses the occurrence. It is more surprising that all the five witnesses have categorically stated that although they saw one bleeding injury on the body of the informant, they cannot say how he sustained injuries. It is the evidence of the informant that these witnesses carried him to PS and the hospital, but the informant atleast did not disclose before them that he sustained injury due to assault by the convict. Thus, the evidence of Sarbeswar appears to be doubtful and he appears to be a tutored witness from the side of prosecution. There is no evidence in the mouth of the informant disclosing any reason as to why the prosecution witnesses who are named in the FIR did not support his case nor any argument has been made by the learned Addl. PP to that effect. Therefore, the witnesses do not appear to be trustworthy and I find no corroboration to the evidence of the informant in any manner.

7. Learned counsel for the appellant has argued that on the face of inimical relation between both the parties, the evidence of Kailash is well probable. While both the informant and appellant were quarreling with each other and fighting on the road, the informant sustained injuries and the appellant was also injured in the said occurrence. But, the police being gained over did not forward the appellant to the hospital for his medical examination. After examination of evidence of prosecution witnesses, it does not create confidence to believe that they are trustworthy. It is the principle of criminal jurisprudence that whenever a doubt arises on the evidence of the witnesses and the prosecution witnesses do not appear to be believable under such circumstance, the accused shall take the benefit of doubt and shall be acquitted.

8. As per my above observation, out of the six witnesses examined from the side of the prosecution, the evidence of any of the witnesses does not inspire confidence in order to believe that the convict assaulted with belt on the head of the informant causing bleeding injury.

9. In the result, the convict is entitled for acquittal from the offence u/s 323 IPC. Consequently, the appeal stands allowed. The judgment of conviction and order of sentence are set aside and the appellant is directed to be set at liberty forthwith unless he is required to be detained in any other case.

Pronounced in the open Court today this the 19<sup>th</sup> day of November, 2013.

Dictated and Corrected by me.

Addl. Sessions Judge, Bhubaneswar

Addl. Sessions Judge, Bhubaneswar