

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,Bhubaneswar.

G.R.CASE NO.2721/01

(Arising out of Saheed Nagar P.S. Case No.280 dtd.23.08.01)

S T A T E**-Versus-**

1. Pradyumna Kishore Padhi, aged about 35 years,
S/o Sarat Chandra Padhi,
Laxmi Bihar, PS:Saheed Nagar, Dist: Khurda,
At/Pr: C.V.Raman Nagar, PS:Indira Nagar, Dist:Bangalore (Karnatak)
2. Abhaya Ku.Mohanta, aged about 39 years
S/o- Sri Biswanath Mohanta,
At; Maheswarpur, PS: Chanpua, Dist:Keonjhar
At/Pr. Badazamanda, Ps: Badazama, Dist: West Singhabhum.(Jharkhand)

..... Accused persons.

Counsel for the prosecution : Sri Bidyut Ranjan Mishra,A.P.P, BBSR.

Counsel for the defence : Sri A.K.Acharya & Asso., Advs, BBSR

OFFENCE U/S.279/337/338/294/34 I.P.C

Date of argument: 23.12.14

Date of judgment: 27.12.14

J U D G M E N T

1. In this case the above named accused stand his trial U/s.279/337/338 IPC
2. The prosecution case, in short, is that:

On 23.8.01 at 11.30 AM one Harek.rushna Samal(pw.1) lodged a written FIR (Ext.1) at Saheed Nagar PS alleging there in that on 22.8.01, Wednesday at about 11 am while he was going to 7th Batallion office to attend his duty with his Rajdoot motorcycle-bearing No.ERP-2584 on the way at Coal India Crossing, Chandrasekharpur one Hero-Honda motorcycle bearing No.OR-02K-2983 coming with

high speed gave dash to his motorcycle from the backside. Due to said accident pw.1 fell down receiving multiple injuries on his person. It is further alleged that the pillion rider of the Hero Honda Motorcycle abused at pw.1 in obscene words. Soon after the accident the persons present at the spot shifted pw.1 to 7th Battalion hospital for his treatment. On the basis of Ext.1 Saheed Nagar PS case No.280 dtd 23.1.10 U/s.279/337/338/34 IPC was registered. Investigation was undertaken there of. During the course of investigation both the accident motorcycles along with its relevant documents, DL of the informant and DL of the accused driver namely Pradumna Padhy were seized by the police. In the course of investigation it was ascertained that Abhaya Mohanta was the pillion rider of the motorcycle of accused Pradumna Kishore Padhy's motorcycle who is alleged to have abused at the informant in obscene words. After completion of usual Investigation police submitted charge sheet against both the accused persons named above U/s.279/337/338/294/34 IPC before the Court of Ld. SDJM, BBSR to face their trial in the court of law. Subsequently this case was transferred to this court for disposal according to 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 22.8.11 at 11 am the accused Pradumna kishore Padhy was driving the Hero Honda motorcycle bearing Regd no.OR-02-K-2983 rash & negligently with high speed & dashed to the motorcycle (Rajdoot) of the informant (pw.1) bearing Regd No. ORP-2584 from its backside.?

ii) Whether due to the said accident the informant(pw.1) received injury on his persons?

iii) Whether accused Abhaya Mohanta was the pillion rider of the motorcycle of accused Pradyumna Padhi at the relevant time of the accident?

iv) Whether both the accused persons, in furtherance of their common intention caused annoyance to others by using obscene words towards the informant in a public place?

5. To establish its case prosecution has examined 3 witnesses in all . PW.1 is the informant cum injured. Pws 2 & 3 were alleged to be the witnesses to the accident. Pws 2 & 3 were the staffs of 7th Batallion, BBSR. Their evidence reveals that while they were coming to the O/o 7th Batallion near at Coal India Square found one Hero Honda motorcycle gave a dash to a Rajdoot motorcycle and soon after the accident the Hero Honda motorcycle went away and the Rajdoot motorcycle and its rider fell down on the

road. Subsequently they came to know that the rider of the Rajdoot motorcycle was one of the staff of the 7th Batallion who has joined recently. Due to said accident the rider of the Rajdoot received injuries on his persons sometimes after the accident the family members of the rider came and took the injured with on motorcycle from the occurrence spot. In cross examination both the witnesses have categorically stated that they can not say the registration number of the Hero Honda motorcycle which gave dash to the Rajdoot motorcycle. They also can not say the name of the rider of the Hero Honda motorcycle. They have also categorically stated that they can not say exactly actually due to whose latches the accident took place. PW.1 is the informant. He has corroborated the story narrated in the FIR (Ext.1) but his evidence does not disclose the name of the persons actually who was driving the Hero Honda motorcycle by the relevant time of accident. As per his evidence before the court the accused persons were responsible for the alleged accident but the informant had not disclosed their name in the body of the FIR (Ext.1) He had not also stated in the FIR that he can identify the persons who had caused accident if he will see them. No TI parade was conducted in this case. The evidence of Pws 1 to 3 does not disclose that the accused persons had used obscene languages. The evidence of PW.1 does not indicate actually out of two accused persons, who was driving the Hero Honda motorcycle in question at the relevant time of accident and who was the pillion rider. When prosecution's evidence is not clear actually which accused was driving the Hero Honda motorcycle and which accused was the pillion rider at the time of alleged accident it will be too difficult to hold both the accused guilty under sections 279/337/338/294/34 IPC.

Therefore I am of the opinion that the prosecution has failed to establish its case against both the accused persons under the above mentioned sections beyond all reasonable doubt.

In the result, I hold both the accused not guilty for the offences punishable U/s.279/337/338 IPC and acquit them therefrom U/s.255(1) CrPC. Both he accused are on court bail as such they be discharged from their bail bonds .

The zimanama in respect of the seized motorcycle bearing Regd. NO. ORP-2584 & OR-02K-2983 along with its relevant documents, Dls is here by can-celled and the same be retained with the respective zimadars,, four months after the appeal period is over, if there would be no appeal.

Addl.C.J.M,Bhubaneswar.

The judgment is dictated,corrected and pronounced by me in the open court today i.e. on 27 th day of December, 2014 under my hand and seal of this court.

Addl.C.J.M,Bhubaneswar.

List of P.ws. examined for prosecution.

P.w.1 Hatakrushna Samal

P.w.2 Bansidhar Singh

p.w.3 Kailash Ch. Nahak

List of D.ws.examined for defence.

None.

List of exhibits marked for prosecution.

Ext.1 Written F.I.R

Ext.1/1 Signature of p.w.1 on Ext.1

Ext.2 Seizure list dtd 23.8.01

Ext.2/1 Signature of pw.1 in Ext.2

Ext.3 Zimanama

Ext.3/1 Signature of pw1 in Ext.3

Ext.4 Signature of pw.4 in Seizure list dtd 10.7.11

List of exhibits marked for defence.

N i l.

List of M.Os.

N i l.

Addl.C.J.M,Bhubaneswar.