

## 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.894/10**

(Arising out of Mancheswar P.S. Case No.87 dtd.26.03.10)

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

1. Kartik Sahoo, aged about 35 years, S/o Late Narasingha Sahu,  
Village: Naharkanta, PS: Baliana, Dist: Khurda
2. Lalit Ku. Beura, aged about 31 years, s/o-Pravat ku. Beura  
At-Mancheswar, PS-Mancheswar, Dist-Khurda,

..... Accused persons.

Counsel for the prosecution : Sri Bidyutranjan Misra A.P.P, Bhubaneswar.

Counsel for the defence : Sri L.Dash & U.Pattnaik, Advs, Bhubaneswar

OFFENCE U/S.448/294/427/34 I.P.C

Date of argument: 8.12.14

Date of judgment: 9.12.14

**J U D G M E N T**

1. In this case the above named accused persons stand their trial  
U/s.448,294,427/34 IPC

2. The prosecution case, in short, is that:

One Sri Arindam Biswal (pw.2) lodged an written FIR (Ext.1) at Mancheswar PS on 26.3.14 at 9 pm alleging there in that hewas in a rented house situated over Plot No.1461/7705, Satya Bihar under Mancheswar PS. On that date about 2 pm he received information from his friend Subasis Behera over phone that accused Kartika Sahoo, Lalita Behera @ Babuli abused him (Subasis Behera) in obscene languages. Getting this information he (pw.2) came to the house of his friend Subasis Behera to enquiry into the matter on which both the accused persons became annoyed to him. Therefore he went to his office where he was working as Sr. Executive, Aircel, BBSR, at about 7 pm he got information over phone that both the

accused persons having trespassed into his aforesaid rented house caused damage to the door of his house as well as house hold articles including one TV set. Apart to that both the accused also caused damage to one Bajaj Pulsar motorcycle of his neighbour. After getting information about the incident from his neighbour he came to his house and found both the accused persons Kartika Sahoo & Babuli went away running from the house. Seeing them running when he asked them about the reason. Both the above named accused persons did not listen to him rather they abused him in obscene languages. Basing on the written FIR (Ext.1) Mancheswar PS Case No.87 dtd. 26.3.10 U/s.448,294,427/34 IPC was registered against both the accused named above. Investigation was undertaken there of. After completion of the investigation police submitted charge sheet against both the accused persons under the aforesaid sections 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 26.3.10 at 7 pm both the accused in furtherance of their common intention had criminally trespassed to the rented house of Arindam Biswal (pw.2) ?

ii) Whether on the alleged date, time and at place both the accused in furtherance of their common intention caused annoyance to others by using obscene words to pw.2 in or near a public place?.

iii) Whether on the alleged date, time & at place both the accused persons in furtherance of their common intention caused mischief by damaging the door of the house, house hold articles including one TV set of pw.2 as well as one bajaj Pulsar motorcycle of his brother?

5. To establish its case prosecution has examined in all two witnesses including the informant (pw.2). PW.1 was one of the friend of pw.2 to whom both the accused persons had abused in obscene words, prior to the relevant time of occurrence . On the other hand defence adduced no evidence on its side.

6. PW.2 is the informant himself. His evidence before the court goes to show that on one day of March 2010 during morning hour a group of boys came to his rented house of one of his friend namely Subas Behera situated at Satya Bihar abused at him and destroyed some of his house hold articles. His evidence further reveals that on the same day evening similarly a group of boys came to his rented house at Satya Bihar abused at him , destroyed some house hold articles for which

he has lodged FIR (Ext.1) at the PS. . In cross examination he has stated that he had not seen both the occurrence. Although this witness had known both the accused but he had not stated that both the accused were the members of the said group of boys who had abused & caused damage to the household articles of his house as well as abused at him in obscene words. Had both the accused actually been committed the alleged offences pw.2 must have implicated them in the alleged occurrence as he had known to them . But pw.2 has not stated the same in his evidence. According to the prosecution allegation on the alleged date of occurrence at about 2 pm both the accused had abused at Subasis Behera (pw.1) one of the friend of PW.2, pw.2 knowing this incident by over phone came to the house of pw.1 and inquiry into the matter and as such both the accused became annoyed on him. Reading the evidence of pw.1 shows that he does not know the accused persons and he does not know exactly what had happened in this case as the incident in this case had taken place about 2 years back from the date of his deposition before the court i.e on 15.11.12. Prosecution has also got no help from the evidence of pw.1 to implicate both the accused in this case. Taking the evidence of pw.1 & 2 into consideration I am of the view that prosecution has failed to implicate both the accused with the commission of alleged offences. Besides the evidence of pws 1 & 2 prosecution has no other evidence against the accused persons . FIR is not a substantive piece of evidence. It can be only used for the purpose of corroboration and contradiction with the maker there of. Here in the instant case pw.2 being the maker of FIR (Ext.1) has not corroborated the FIR story. Therefore the prosecution can not take any benefit out of the FIR (Ext.1). taking a stand that the same has been marked as exhibit without objection from the side of the defence. Therefore, In view of the aforesaid discussion I am of the view that prosecution has failed to establish its case against both the accused and as such they are entitled to be acquitted.

In the result, I hold both the accused persons not guilty of the offences U/Ss.448,294,427/34 IPC and acquit them therefrom U/s.255(1) CrPC. Both the accused persons are on court bail as such they be discharged from their respective bail bonds .

The zimanama executed on 26.3.10 in connection with Mancheswar PS Case No.87 dtd 26.3.10 U/s.448/294/427/34 IPC in respect of retail invoice of cash, one LG Colour TV of Model 21 FU8RGE worth of Rs.8000/- along with TV set , model NO.8354, purchased from Bharat electronic, BBSR is here by can-celled and the same be retained in the zima of Arindam Biswal (pw.2) 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 9<sup>th</sup> day of December, 2013 under my hand and seal of this court.

Addl.C.J.M,Bhubaneswar.

List of P.ws. examined for prosecution.

P.w.1            Subasis Behera

P.w.2            Arindam Biswal

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.2 on Ext.1

Ext.2            Seizure list dtd 26.3.10

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

Ext.3            Zimanama dtd 26.3.10

Ext.3/1

List of exhibits marked for defence.

N i l.

List of M.Os.

N i l.

Addl.C.J.M,Bhubaneswar.