

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
BANPUR**

Present : Miss. Sarmistha Dash, LL.B.,
Judicial Magistrate First Class,
Banpur

Date of Argument :08.08.2014
Date of Judgment :21.08.2014

G.R. Case No.120/2007
T.R. No. 361/2007

State ... Prosecution
-Versus-
Niranjan Pradhan, aged about 39 years,
S/o Ladu Pradhan
Vill: Bhimpur Nuapatana sahi,
P.S: Banpur,Dist: Khurda. Accused .

Offence : U/s 341,323,294 of IPC

For the Prosecution : Sri Jaladhar Pradhan, APP
For the Defence. : Sri M.P.Samantasinghar & his associates.

J U D G M E N T

01. The above named accused stands prosecuted for the offence punishable U/s. 341,323,294 of IPC.

02. The brief facts of the prosecution case is that:-

On 19.04.2007 one Prasana Pradhan lodged a written report before the O.I.C of Banpur PS that he made an application in the Tahasil office for demarcation of his land so a notice was issued to the other party namely Ladu Pradhan. On 17.04.2007 at 10 pm Niranjan Pradhan and Ladu Pradhan came to him and abused him in obscene

languages by saying “ HAIRE SALE MAGIHA TU AMAKU NAPACHARI KAHINKI NOTICE PATHAILU” .When he made protest all of a sudden the accused abused him by saying”SALA BESI GIHAUCHHU” and dealt a heavy blow to his back by means of wooden plank so he fell down on the ground. Then all the accused persons threatened to kill him and gave a another blow. Ladu Pradhan by holding his two legs gave kicks and fist blows so he was lying on the ground in a bleeding condition. One Fakira Pradhan and his mother came and tried to rescue him at that time accused caught hold his mother and abused him in obscene language and assaulted her by wooden plank so she sustained injury on her elbow knee and head, Thereafter the accused persons left the place then the informant and his mother and they had gone to Banpur C.H.C. for treatment.

Upon such report P.S. Case No.70/2007 was registered and investigation was carried out and after completion of investigation as prima facie evidence is well made out against the accused, the I.O. submitted charge sheet against him. Hence this trial.

03. The plea of accused is one of complete denial and false implication.

04. The points for determination in this case emerge as follows:

- (i) Whether on 17.04.2007 at 10 pm the accused wrongfully restrained the informant from proceeding in a certain direction in which they had right to proceed?

(ii) Whether on the same date, time and place of occurrence the accused voluntarily caused hurt to the informant and his mother?

(iii) Whether on the above noted date, time and place the accused abused the informant and his mother in obscene languages in or near any public place causing annoyance to others?

05. In order to prove its case, prosecution has examined as many as four witnesses in its favour. Out of them, P.W. 4 is the informant, P.W.2 is the victim, P.Ws 2 & 3 are the witnesses to the occurrence. Ext.1, 1/1, and 2 are marked on behalf of the prosecution. On the other hand defence has examined none.

06. On perusal of the evidence available on record it is found that P.W.4 is the informant of this case in his evidence stated that on the alleged date a notice was received by the accused for demarcation as his father made an application for demarcation. On receipt of the notice the accused abused him by saying "Magiha" and when he tried to clarify it but the accused persons assaulted him by a wooden plank, so he fell down. Then the accused assaulted him and on hearing the noise his mother came to the spot. When his mother tried to intervene the accused gave a blow to his mother so she fell down on the ground. Fakira Swain interfere the matter and then he lodged the F.I.R. He said that he sustained injury on his backside by the accused. P.W.2 the victim of this

case in her evidence stated that on the alleged date when they had applied for the demarcation of their land by Amin, the notice was received by the accused. After receipt of the notice the accused persons came to their front verandah and abused her son in filthy languages “SALA MADURCHOOD KANA NOTICE PATHAICHHU SALAKU MARIBI HANIBI” and her son made protest. Accused Ladu and Niranjana dragged her son from their house verandah to village danda and accused Niranjana brought a wooden plank from her house and assaulted her son. Seeing this she tried to save her son. At that time the accused Ladu gave a kick blow to her buttock as a result she fell down and sustained scratch injury in different parts of her body. The accused also assaulted her right side waste, right leg, knee with that piece of wood causing bleeding injury in those places. P.W.1 the father of the informant in his evidence stated that he has filed a demarcation case. He along with the accused had received the notice from the Tahasil office. After receipt of the notice accused Niranjana came to him and abused him by saying “HAIRE SALA MAGIHA SALA AMA NAMARE KAHINKI NOTICE PATHEILU”. When his son objected him the accused abused him by saying “Magiha” and assaulted his back with a piece of wood causing bleeding injury in his back when his wife objected it Ladu Pradhan came to the spot and assaulted her by giving two kick blows. P.W.3 pleaded his complete ignorance in this case. The injury report of Prason Pradhan shows that he sustained (i) Deep

abrasion 2" X 1" at a elbow back (ii) laceration 1" X 1" left shoulder joint (iii) bruise 2" X depth right buttock. All the injuries are simple in nature caused by hard and blunt weapon. The injury sustained by Manorama Pradhan shows that (i) laceration crushed back and right elbow of size 2 " X 1 " (ii) deep abrasion 3 " X 2" over right knee (iii) laceration 2 " X 2" over right elbow. All the injuries are simple in nature.

. During hearing of argument learned counsel for defence attracted view of court regarding to the existing lacuna's in prosecution case including inconsistencies in version of prosecution witnesses. On the above grounds learned counsel pleaded that the accused person may be extended benefit of doubt and be acquitted.

So far as the inconsistencies/discrepancies in the version of witnesses is concerned law is well settled in this respect that *while appreciating the evidence of a witness in criminal case the court should not attach much importance to minor discrepancies which do not shake the basic version of the prosecution and should ignore the errors due to the lapse of memory and ignore those statements made by the witness under fear or confusion from imagination on the spur of moment.* [Babar Ali Ahmed Ali Sayed v. State of Gujarat (1991) Cri. L.J. 1269 (D.B.)]. In the present case the witness are rustic villagers, so it is reasonable that some differences may exists in their statements. A minor discrepancy can not throw the entire prosecution evidence. So far

as the question of non corroboration from independent sources is concerned it is pertinent to mention here that **State of Kerla Vs. Kurissum Mottilal Antony 2007(1) Crimes 22(SC)** it has been held that an accused can not cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken by the victim strikes a judicial mind as probable. Judicial response to human rights can not be blunted by legal jugglery. It is pertinent to mention here that evidence is to be weighed and not to be counted. Where evidence of a single witness is found out to be cogent, consistent and inspires trust, non-corroboration from the part of other witnesses does not affect the case and the consequence is never fatal. So far as the non-examination of I.O. is concerned, *SudanGope vs state of Bihar 2000(2)Crimes255 Patna* it is held that *non examination of IO will not be sufficient to throw the whole prosecution case when prosecution is found established from the oral and medical evidence.* Though the defence has taken the plea that he has not get any opportunity to cross-examine IO but he has not assign any ground in what way he was prejudice due to non-examination of I.O. It is pertinent to mention that it is a case of year 2007 and the attendance of IO can't be procured due to his death so he was declined by the prosecution, in such a circumstances if we do not take into consideration the evidence of IO then we have to see whether the offences in which the accused persons alleged are proved or not by the prosecution.

07. To bring home the charge U/s.341IPC, the prosecution must prove :-

- (i) that the accused obstructed a person
- (ii) that such obstruction prevented the person from proceeding in a direction in which he has a right to proceed
- (iii) that the accused caused such obstruction voluntarily

In the present case after perusal of the evidence as well as the case record I found that though the witnesses to the occurrence including the informant and victim categorically stated that the accused assaulted the informant and his mother and abused them in obscene languages but nowhere they stated that the accused obstructed the way of the informant and victim, so as to prevent from proceeding in a direction in which they had a right to proceed rather the informant was very much present inside their house at the time of occurrence, so there is no question of obstruction on the way of the informant took place.

So after considering the material on record it can be safely concluded that the vital ingredient to constitute offence U/s.341 is absent. So also the prosecution has failed to prove the charge U/s.341 of IPC against the accused beyond all reasonable doubt.

08. Coming to the second point for determination i.e offence U/s.294 of IPC the prosecution has to prove:-

- the accused did some act
- Sang recited or uttered any song or balled

- that such act, hanging etc was obscene
- that it was done on public place
- it cause annoyance to others.

Though it is alleged in the F.I.R that the accused Niranjana Pradhan and Ladu Pradhan abused them by saying “HAIRE SALA MAGIHA” But the informant in his evidence stated that the accused abused him by saying “MAGIHA”. P.W.1 deposed that the accused abused him by saying “MAGIHA SALA AMA NAMARE KAHINKI NOTICE PATHILU”. P.W.3 deposed that the accused abused his son by saying “ SALA MADURCHOOD KANA NOTICE PATHICHHU SALAKU MARIBI AND HANIBI”. And Pw4 stated that the accused abused him as maghia.

On careful scrutinization of above evidence it is found that though it is alleged in the F.I.R. the accused persons abused the informant so, also the informant and stated that the accused persons abused the informant but surprisingly evidence of the each of the case the obscene language used by accused are quite different from each other such as the F.I.R. reveals that accused abused the informant by saying “HAIRE SALA MAGIHA” but the informant in his evidence stated “maghia” which are quite different from each other. But P.W.2 the mother of informant stated that accused abused her son as “SALA MADURCHOOD KANA NOTICE PATHICHHU SALAKU MARIBI AND HANIBI” which is also different from the FIR and evidence of

informant while she was very much present on the spot during the entire period of occurrence. That the place of occurrence took place on danda and many people gathered there but the independent witness to the occurrence to the case pleaded his complete ignorance about it. Apart from that none of the PWs stated that they got annoyance by the act of accused . Considering the above aspects I am of the view that prosecution has failed to prove this offence against the accused.

09. So far as the third point of determination U/s 323 of the I.P.C is concerned the prosecution has to prove

- That the accused by his act caused bodily pain disease or infirmity to the complainant.
- That he did such act intentionally or with knowledge that it would cause hurt etc.

The FIR story reveals that the accused abused the informant and when he made protest dealt a heavy blow to his back by means of wooden plank so he fell down on the ground. Then the accused threatened to kill him and gave a another blow. Ladu Pradhan by holding his two legs gave kicks and fist blows so he was lying on the ground in a bleeding condition. One Fakira Pradhan and his mother came and tried to rescue him at that time accused caught hold his mother and abused her in obscene language and assaulted her by wooden plank so she sustained injury on her elbow knee and head. Thereafter the accused left the place then the informant and his mother

had gone to Banpur C.H.C. for treatment. The informant stated that the accused assaulted him by a wooden plank, so he fell down. When the accused assaulted him and on hearing the noise his mother came to the spot. When his mother tried to intervene the accused gave a blow to his mother so she fell down on the ground. Fakira Swain interfere in the matter. He said that he sustained injury on his backside by the accused. P.W.2 the victim of this case in her evidence stated that Accused Ladu and Niranjana dragged her son from their house varandah to village danda and accused Niranjana brought a wooden plank from her house and assaulted her son. Seeing this she tried to save her son. At that time the accused Ladu gave a kick blow to her buttock as a result she fell down and she sustained scratch injury in the different parts of her body. The accused also assaulted her right side waste, right leg, knee with that piece of wood causing bleeding injury in those places. P.W.1 the father of the informant in his evidence stated that the accused persons assaulted his son on his back with a piece of wood causing bleeding injury in his back when his wife objected it. Ladu Pradhan came to the spot and assaulted her by giving two kick blows. P.W.3 pleaded his complete ignorance in this case. The injury report shows that the injured Prason Pradhan sustained (i) Dap abrasion 2" X 1" at a elbow back (ii) laceration 1" X 1" left shoulder joint (iii) bruise 2" X depth right buttock. All the injuries are simple in nature caused by hard and blunt weapon. The injury sustained by Manorama Pradhan (i) laceration

crushed back and right elbow of size 2 “ X 1 “ (ii) deep abrasion 3 “ X 2” over right knee (iii) laceration 2 “ X 2” over right elbow. All the injuries are simple in nature.

Now it has to be determined if the prosecution has proved beyond all reasonable doubt that the accused voluntarily caused hurt to the informant and victim. On careful scrutinization it is found that the informant and her mother sustained injuries in their body due to the assault of the accused. P.W.1 the father of the informant also corroborated it and stated that the informant and her mother were assaulted by the accused. From the evidence of the witnesses as well as the injury report it is clearly proved that the informant and his mother sustained injuries on their body.

From the above made discussion it is found that it is amply clear from the evidence of P.Ws that the informant and her mother was assaulted by the accused. In order to make a person liable U/s.323 of evidence I.P.C it is sufficient that the accused voluntary caused hurt to the persons on their body. In the present case from the evidence of informant, as well as the injury report of M.O and evidence of witnesses to the occurrence it is clearly prove that the informant and victim sustained injuries on their body which was caused due to the assault of accused person, so considering the above aspect I am of the view that prosecution has well prove the offence U/s.323 of IPC against the accused beyond all reasonable doubt.

So in view of above made discussion it can be safely concluded that the prosecution has well proved it's case against the accused beyond all reasonable doubt U/s.323 IPC.

In the result, I found the accused is found not guilty for the offence U/s.341/294 IPC and acquitted U/s.255(1) IPC and the accused is found guilty U/s.323 IPC and convicted U/s.255(II) IPC.

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10. Keeping in view to the increasing emphasis on the reformatory and rehabilitative process of penal law this court is now to consider whether the convict is entitled to get the benefit of the benevolent provision of the Probation of Offenders Act,1958. Considering the matter of previous dispute between the parties, age, antecedents, background of the convict, nature of offence committed; this court holds that he is entitled to the benefit of P.O. Act. Moreover, in the present case the culpable intention of the offenders to commit alleged offences is not proved by the prosecution beyond reasonable doubt and he is acquitted from the charges u/s 341/294 of IPC. Keeping in view to all these factors, this court feels that the purpose of justice shall be better served in releasing the offenders u/s 3 of the Probation of offenders Act,1958 after due admonition. Let the accused be released u/s 3 of the P.O. Act after giving him due admonition. He is discharged from his bail bond.

The seized articles if any shall be destroyed after expiry of four months of the appeal period is over if no appeal is preferred and in case of appeal as per the direction of the Appellate Court.

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This judgment is typed out as per my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, on this the 21st day of August, 2014.

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List of witnesses examined for Prosecution.

P.W.1 Jhadu pradhan
P.W.2 Manorama Pradhan
P.W.3 Fakira Swain
P.W.4 Prasanna Pradhan

List of witnesses examined for defence.

None.

List of Exhibits marked for Prosecution.

Ext-1 F.I.R.

Ext. 1/1 Signature of P.W.4 on Ext.1.

Ext.2 Signature of P.W.4 on Injury report.

Ext.2/1 Injury report.

List of Exhibits marked for defence.

Nil

List of MOs marked for Prosecution.

Nil

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