

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BANPUR

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

Date of Argument :21.10.2014
Date of Judgment :29.10.2014

G.R. Case No.148/2008
T.R. No. 23/2009

State ... Prosecution

-Versus-

1. Saila Mansing, aged about 66 years, W/o Jhari Mansing.
2. Bedesi Mansing, aged about 38 years, S/o Jhari Mansing.
3. Asha Mansing, aged about 28 years, D/o Jhari Mansing.
4. Agadi @ Laxmipriya Mansingh, aged about 36 years, D/o Jhari Mansing.

All are of Vill: Kumbhirapada, P.S:Balugaon, Dist. Khurda

.... Accused Persons

Offence : U/s 323/341/324/506/ 34 of IPC

For the Prosecution : Sri Jaladhar Pradhan, APP

For the Defence. : Sri Ajit Kumar Swain & his associates.

JUDGMENT

01. The above named accused persons stand prosecuted for the offence punishable U/s. 323/341/324/506/ 34 of IPC.

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

One Ahalya Mansing lodged a written report before the Balugaon P.S that on 30.05.2008 at about 3 pm when she was sitting in front of her house verandah and her husband was cleaning the door way all the accused persons appeared in front of their house being armed with kati, spade and lathi. The accused Bidesi Mansingh dealt a kati blow to the head of her husband, but her husband caught hold the kati as a result he sustained bleeding injury on his left hand. Accused Agadi dealt a spade blow on the back side of her husband and

accused Saila and Asha also assaulted the informant and her husband. The accused Agadi also snatched away gold chains from the neck of the informant's mother in-law.

Upon such report P.S. Case No. 59/2008 was registered and investigation was carried out and after completion of investigation as prima facie evidence is well made out against the accused persons, the I.O. submitted charge sheet against them. 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 30.05.2008 at about 3 pm at Kumbirapada the accused persons in furtherance of their common intention wrongfully restrained the informant and her husband from proceeding them in a certain direction in which they had right to proceed?
- (ii) Whether on the same date, time and place of occurrence the accused persons in furtherance of their common intention voluntarily caused hurt to the informant and her husband?
- (iii) Whether on the same date, time and place of occurrence the accused persons in furtherance of their common intention voluntarily caused grievous hurt by means of a kati to the informant's husband?
- (iv) Whether on the above noted date, time and place the accused persons in furtherance of their common intention committed criminal intimidation and caused alarm to her?

05. In order to prove its case, prosecution has examined as many as five witnesses in its favour. Out of them, P.W. 2 is the informant, P.W.3 is the

husband of the informant, P.W.5 is the M.O and rest are independent witnesses to the occurrence. Ext.1, 1/1, 2, 2/1, 3 & 3/1 are marked on behalf of the prosecution. On the other hand defence has examined none.

06. On perusal of the evidence of the informant P.W.2 of this case in her evidence stated that on the alleged date at about 3 pm the incident took place on the front side of their house at that time her husband was sweeping the front portion of their house the accused persons namely Bideshi, Saila came to the spot and Bideshi tried to assault him in a katari to which her husband hold it caused injury in his left hand. Seeing this she rushed to the spot to save her husband. He also assaulted her with that katari resulting injury in his left hand. Thereafter Agadi and Asha Mansingh came to the spot. Asha assaulted her husband with a spade in his waist in back causing bleeding injury. Hearing the noise when her mother in-law rushed to the spot the accused Agadi snatched away the golden soricia chain and Tulasi chain from her neck.

07. Heard the Learned counsel for both the sides. During the course of the argument the Learned counsel for the defence pleaded that the prosecution case suffers from several lacunas. There is previous dispute between the parties and no independent corroboration exist and there exist a several discrepancies and inconsistency in the version of prosecution witnesses. Hence prosecution has failed to prove its case beyond all reasonable doubt for which the accused persons are entitled to the benefit of doubt and may be acquitted.

So far as plea of defence regarding to witnesses being related/partisan or enimical towards the accused persons is concerned law is well settled in this context that conviction can be based on the basis of evidence of close relative provided their evidence is subjected to close scrutiny but nothing adverse is found to doubt their credibility **[Gurmej Singh –Versus-**

State of Punjab-1991 (3) crimes 220 (225 S.C.)]. Moreover, in **Susil – Versus- State of U.P. 1994 (3) Crimes 831 S.C.** it was held that *the mere fact that the witnesses are either relative of the deceased or enimical towards the accused by itself is not a circumstance to throw away the evidence. But their evidence has to be closely scrutinized with care and caution and it found to be consistent and supportable from other independent sources there is no reason to discredit their testimony.* So far as the inconsistencies/discrepancies in the version of witnesses is concerned law is well settled in the 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.)]. Admittedly, previous dispute between the accused persons and the villagers is proved, hence defence may have taken plea that chances of preparation of case can not be ruled out. But after considering all the circumstances of the case and degree of corroboration of evidence to the case of prosecution it cannot be stated that the incriminating materials found against the accused persons are all prepared/tutored. Besides that law is well settled that in proving of previous enmity between the parties does not wash away the case of prosecution, rather, it is the rule of prudence which requires that in case of proving of previous dispute evidence of prosecution side must be scrutinized with more care and caution.

To bring home the charge U/s.341/34 IPC, 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 witness to the occurrence including the informant categorically stated that the accused persons assaulted the informant and abused her but nowhere they stated that the accused persons obstructed the way of the informant, so as to prevent from proceeding in a direction in which she had a right to proceed rather the informant was very much present outside at the time of occurrence, so there is no question of obstruction on the way of the informant taking place.

So after considering the material on record it can be safely concluded that the vital ingredient to constitute offence U/s.341/34 is absent. So also the prosecution has failed to prove the charge U/s.341/34 of IPC against the accused persons beyond all reasonable doubt.

08. Coming to the second point for determination i.e. offence U/s.354/34 of IPC the prosecution has to prove:-

- i) A woman was assaulted or subjected to use of assault criminal force;
- ii) The intention of the accused was to outrage her modesty; or
- iii) the accused knew that her modesty will be outraged.

In the present case the informant categorically alleged in FIR that all the accused persons assaulted her and pulled her sari to outrage her modesty but nowhere in evidence neither the informant nor her husband or any other witness stated that the accused persons pulled the sari of the informant or

do any other act with the informant with an intention to outrage her modesty. So the prosecution has failed to prove the charge U/s.354/34 of IPC against the accused persons beyond all reasonable doubt.

09. Coming to the fourth point for determination i.e. offence U/s.294/34 of IPC the prosecution has to prove:-

- (i) the accused did some act
- (ii) Sang recited or uttered any song or ballad
- (iii) that such act, hanging etc was obscene
- (iv) that it was done in public place
- (v) it caused annoyance to others.

On careful scrutiny of the above evidence of the informant it is found that she has categorically said that the accused persons abused her in obscene language such as "Randi Ku Mara" but P.Ws 2,3,4,5 and 6 silent about the utterance of obscene words by accused persons so there is no such annoyance caused by the accused persons where as the informant clearly stated that 2,3 and 5 are very much present at the spot. When one of the essential ingredients of 294 IPC is not proved I do not think it proper to discuss the evidence more elaborately for the offence u/s 294/34 of the I.P.C. So from the above discussion the prosecution has failed to prove the guilty of accused persons beyond all reasonable doubt U/s.294/34 of IPC.

. So far as offence U/s.506 is concerned the prosecution has to prove:-

- (i) the accused threatened someone with injury to his person, reputation or property or to the person reputation of another in whom the former was interested
- (ii) the accused did so with intent to cause alarm to the victim

(iii)the accused did so to cause the victim to perform any act which he was not legally bound to do

So far the offence U/s.506 of I.P.C. is concerned, except the FIR as well as the evidence of PW.1, nowhere else in the evidence there is any evidence about the threatening of the accused to do away with the life of informant. Except the abuse there is no other act of the accused persons which would show their intention to do away with the life of the informant. Therefore, I am of the opinion that the prosecution is failed to prove its case against the accused persons for the offence U/s.506/34 of I.P.C.

So far as the third point of determination U/s 323/34 of the I.P.C is concerned the prosecution has to prove

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

In the present case the informant alleged in the FIR the accused persons assaulted her by the ukhani badi on his left hand and entire body and made bleeding injuries then Tulasi Samantaray gave kick blows to her where in her evidence she stated that accused Dhoba assaulted her on her palm and Ashanti pulled her hair so she fall down on the ground P.W.6 corroborated the statement of the informant and supported the version of informant he said that accused persons assaulted his wife and after assault he took her to hospital. P.W.8 the M.O of this case in his evidence stated that on 14.11.2011on police requisition he examined Parbati Biswal and found lacerated injury $\frac{1}{2}$ X $\frac{1}{2}$ inch over left hand wrist joint and abrasion $\frac{1}{2}$ X $\frac{1}{2}$ inch right leg below on knee joint. He said that the injuries within 1 to 2 hours.PW4,5 the witnesses to the

occurrence also categorically stated that they saw injury on the informant's hand.

On careful scrutinization it is found that the informant in the FIR and the evidence stated that she sustained injury in her body due to the assault of the accused persons, P.W.6 and other witnesses to the occurrence also corroborated it and it is stated that the informant was assaulted by the accused persons. From the evidence of the M.O as well as the injury report it is clearly prove that the informant sustained injuries on her body.

From the above made discussion it is found that it is amply clear from the evidence of P.Ws that the informant was assaulted by the accused persons. Apart from that the fact that the injury sustained informant on her body which was stated by her was also corroborated by the evidence of M.O. and injury report.

So in view of above made discussion it can be safely concluded that the prosecution has well proved it's case against the accused persons beyond all reasonable doubt U/s.323,34 IPC.

In the result, I found the accused persons are found not guilty for the offence U/s.341/294/354/506/34 IPC and acquitted U/s.255(1) IPC and the accused persons are found guilty U/s.323/34 IPC and convicted U/s.255(II) IPC.

**Judicial Magistrate First Class,
Banpur**

Considering the nature of offence the manner in which it is committed and keeping in view the social interest and having regard to the fact of the present case, I am of the considered view that no leniency should be entered to the accused persons. Therefore I am of the considered view that the beneficial provision of Probation of offender's Act should not be extended to the convicts. They deserve to be awarded with sentence.

Considering the nature and gravity of offence and the facts stated above, I am of the considered view that for the ends of justice the convicts shall pay fine of Rs.500 for the offence and in default S.I of 15 days U/s 323/34 I.P.C.. The UTP period if any be set off against the sentence of imprisonment as per the provision of section 428 Cr.P.C.

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.

**Judicial Magistrate First Class,
Banpur**

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 18th day of August, 2014.

**Judicial Magistrate First Class,
Banpur**

List of witnesses examined for Prosecution.

P.W.1	Parbati Biswal
P.W.2	Nandini Biswal
P.W.3	Nayana Biswal
P.W.4	Chandramani Behera
P.W.5	Jagu Biswal
P.W.6	Basanta Biswal
P.W.7	Narayana Suara
P.W.8	Bijay Kumar Bhanja

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.1 on Ext.1.
Ext.2	Injury report
Ext. 2/1	Signature of P.W.1 on Ext.2
Ext.2/2	Report of the P.W.8.

Ext2/3 Signature of P.W.8 on Ext.2.

List of Exhibits marked for defence.

Nil

List of MOs marked for Prosecution.

Nil

**Judicial Magistrate First Class,
Banpur**