

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BANPUR

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

Date of Argument :06.08.2014

Date of Judgment :19.08.2014

G.R. Case No.359/2002

T.R. No. 222/2003

State ... Prosecution
-Versus-

1. Rabindranath Pradhan, aged about 74 years,
S/o Late Banshidhar Pradhan.
 2. Premalata Pradhan, aged about 70 years,
W/o Rabindranath Pradhan.
 3. Nalini Pradhan, aged about 37 years,
D/o Rabindranath Pradhan.
 4. Pakuna @ Nirupama Pradhan, aged about 34 years,
D/o Rabindranath Pradhan.
 5. Iti @ Saudamini Pradhan, aged about 31 years,
D/o Rabindranath Pradhan
- All are of Vill.Ayatapur, P.S.Banpur, Dist.Khurda
..... Accused Persons.

Offence : U/s 341,323,324,354,506, 34 of IPC

For the Prosecution : Sri Jaladhar Pradhan, APP

For the Defence. : Sri G.S. Sarangi & his associates

J U D G M E N T

01. The above named accused persons stand charged for the offence punishable U/s. 341,323,324,506,354,34 of IPC.

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

On 04.11.2002 one Kishore Chandra Pradhan lodged a written report before the O.I.C of Banpur P.S alleging therein that on the same date at about 9AM all the accused persons assaulted him by fist and kick blows by a thenga, so he sustained bleeding injury then the accused Nalini gave teeth bite to him so he raised hullah when his wife tried to rescue him the accused Rabindra and her wife made her half necked and threatened to kill her and set fire to his house. The villagers who were present there rescued them and shifted to medical.

Upon such report P.S. Case No.201/2004 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:

- Whether on 04.11.2002 at 9 A.M. the accused persons in furtherance of their common intention wrongfully restrained the informant and his wife from proceeding in a direction in which they had a right to proceed?
- 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 his wife?
- Whether on the above noted date, time and place the accused persons in furtherance of their common intention voluntarily caused grievous hurt to the informant by means of a thenga?
- Whether on the above noted date, time and place the accused persons in furtherance of their common intention assaulted or use criminal force to the informant's wife intending to outrage her modesty?
- 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 the informant and his wife?

05. In order to prove its case, prosecution has examined as many as six witnesses in its favour. Out of them, P.W. 1 is the informant, P.W.2 is the victim, P.W.3 is the M.O, P.W.4,5 and P.W.6 are the witnesses to the occurrence. Ext.1, 1/1, 2, 2/1 and 2/2, are marked on behalf of the prosecution. On the other hand defence has examined none.

06. On perusal of the evidence it is found that P.W.1 the informant of this case in his evidence stated that on 04.11.2002 at about 9 am he heard altercation between his wife and his sister in-law Premalata Pradhan. So he came to his house and made protest then the accused persons assaulted him. Accused Rabindra Pradhan gave fist blows to his head and also assaulted him by a lathi, so he sustained injury on his

head. Then accused Nalini Pradhan bitten his belly. When his wife rushed towards him to rescue him she was made naked by all the accused persons. Kanhu Maharana, Gokula Maharana and others arrived at the spot separated him and his wife from the clutches of the accused persons. Then they came to Gambharimunda outpost and then sent to Gambharimunda P.H.C and after treatment he came to Banpur P.S to report the incident. He said that prior to this incident the accused Rabindra Pradhan had instituted a I.C.C. case against him and his wife. P.W.2 the victim of this case in her evidence stated that on 4.11.2002 at about 9 am she had altercation of words with her sister in-law at that time her husband came to her to protested but the accused persons rushed towards him and surrounded him. Then they dealt fist blows and slaps to her husband. Then the accused Rabindra dealt a blow by means of a lathi to the head of her husband whereas her niece Nalini gave a bit to his belly by his teeth. The accused Rabindra and his wife dragged her wearing saree for which she became naked. Kanhu Pradhan and Gokula Pradhan arrived at the spot and rescued them. She said that her husband was sustained injury on her head and back. PW.4 the witness to the occurrence in his evidence stated that the occurrence taken place since 8 years back at about 9 am in his village danda. Hearing the shout he went to the spot and found 10 to 15 persons were standing and Kishore Pradhan got a bleeding injury on his head and laying down and he brought him to hospital. He said that the accused persons and the informant were not pulling well with each other. P.W.5 another witness to the occurrence stated that on the alleged date she was standing in front of her house. Hearing the shout she went near the house of the informant and found that after the quarrel in between the parties the informant sustained injury on his forehead and belly. P.W.6 daughter of the informant deposed that hearing about the incident she came to the spot and found that her father had sustained bleeding injury in his forehead. She heard that when her younger brother Manoj was coming from the field her elder father Rabindra Pradhan his wife and daughters assaulted him. Hearing the shout, her father rushed to the spot then Rabindra assaulted his father's head with a muli as a result of which he sustained bleeding injury in his head. The daughter of Rabindra namely Nalini had bitten the belly of her father. They also gave push to her mother and tore her saree when she had gone to save her father. P.W.3 the M.O of this case has stated

that he examined the informant and found (i) cut injury on frontal region above right side forehead of size 1 ½ inch X 1/3inch X ¼ inch (ii) teeth bite marks arranged in a semi circular manner middle portion is bruised in the right side abdomen 2 inch above 1 ½ inch X ½ inch.(iii)_ one bruise injury on left side long abdomen above buttock 1 ½ inch X ½ inch. All the injuries are simple in nature.

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 and there is previous dispute between the parties and no independent corroboration exist and so that 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 non-examination of I.O. is concerned, in **Peon @ Chatrubhuja Murmu vrs State of Orissa (2002) 23 OCR 330** it was held that, ***“where no inconsistency is found in the evidence of eye witnesses and where defence could not prove in what way it is prejudiced for non examination of the investigating officer the prosecution case can not be thrown out.*** More to this law is well settled that ***“ Where no evidence is available for confrontation or contradiction or to explain any unambiguous or doubtful circumstance having been brought on record the non- examination of the I.O can not be said to have prejudice the accused nor failure of justice occasioned.”***

08. Admittedly, previous dispute between the accused persons and the informant 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 and victim categorically stated that the accused persons assaulted the informant and victim and abused the informant but nowhere they stated that the accused persons obstructed the way of the informant, so as to prevent him from proceeding in a direction in which he 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.

09. 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.

It is alleged in the FIR by the informant that when his wife tried to protect him from the clutches of accused persons accused Rabintra Nath Pradhan and his wife threatened to make her wife necked and killed her but in his evidence he said that the accused persons made her wife necked whereas P.W. 2 stated that accused Rabintra and his wife dragged her sari so she became necked PW6 stated that the accused persons pushed her mother and and torn her sari. But the other witnesses to the occurrence remain silent about such act of accused persons. Law is well settled that in order to prove the offence under Section 354/34 of IPC intention or knowledge on the part of accused to outrage the modesty of victim woman must be proved. The word modesty has been defined in **Rupan Dewal Bajaj – Versus- K.P.S. Jil (A.I.R.1996 S.C.) 309**, as “*the quality of being modest in relation to women means*

womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct. The word modest in relation to women is defined as decorous in manner and conduct; not forward or lewd shamefast". The ultimate test for ascertaining whether modesty of a women has been outraged, assaulted or insulted is that the action of the offender should be searched that it may be perceived as one which is capable of shocking the sense of decency of women. On contrary in case of **Mallik S.P. 1982 CrI. L.J. (19) Patna** it was held that *merely putting a hand on the belly of a female by itself could not be construed to indicate that the petitioner was using criminal force within the meaning of Section 354 for the purpose of adding an offence of injury or annoyance it might have been an attempt to draw the attention of the lady, which prove abortive. There was no allegation or evidence that any restriction was caused to the movements of the victim lady nor any criminal act was intended to be committed.* After testing the present circumstances of the case with the touch stone of the above decisions, I found that P.W.1 and 2 though stated about pulling of saree of the victim by accused persons and also pw6 stated that that the accused persons push her mother and and torn her sari. version of the woman whose modesty was allegedly attempted to be outraged and her reaction consequential is much relevant factors to prove the offence concerned. But the victim is silent regarding to any intention of accused persons or any overt acts done by them so that her modesty was offended. Apart from that so far as version of other witnesses regarding to pulling of saree of the victim is concerned, versions of all differ to each other regarding to author of such overt act and no constant allegation against one accused regarding to pulling of saree has been found out. So it can be stated that prosecution has not proved successfully the act of pulling of saree.

In plethora of decisions it has been held that ultimate test for ascertaining whether modesty has been outraged is whether the action of the offender is such as could be perceived as one which is capable of shocking the decency of a women. But from the version of victim such shocking of decency due to any overt act committed by accused persons to outrage her modesty is absent. In this context I am of the humble opinion that no intention of accused persons to outrage the modesty of P.W.2 is being reflected from their acts. As such the accused persons are not found guilty for commission of offence under Section 354/34 of IPC.

10 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 no where in the evidence of none of the PWs, stated about the threatening of the accused to do away with the life of informant or victim. 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.

08. So far as the offence U/s.323/34 is concerned the prosecution has to prove

(i) that the accused voluntarily caused bodily pain, disease or to the victim

(ii) the accused did so with intention to causing hurt or with the knowledge that he would thereby caused hurt to the victim.

So far as the FIR story is concerned it is alleged in the F.I.R that all the accused persons assaulted the informant by means of thenga so he sustained bleeding injury thereon and then accused Nalini gave a teeth bite on his belly so she raised hulla his wife came there to protect him so they threaten to make necked to her wife and killed her people gathered there took him to hospital. The informant who was examined as P.W.1 in his evidence stated that the accused persons assaulted him. His elder brother Rabindra gave a blow on his head by a lathi then accused Nalini gave a teeth bite on his belly while his wife came there to rescue him she was made necked by the accused persons. P.W.2 the wife of informant in her evidence stated that accused persons surrounded her husband and assaulted him by fist and slap blows. Then Rabindra dealt a blow by a lathi on the head of her husband and then Nalini gave a teeth bite on his belly. P.W.3 the M.O of this case has stated that he examined the informant and found (i) cut injury on frontal region above right side forehead of size 1 ½ inch X 1/3inch X ¼ inch (ii) teeth bite marks arranged in a semi circular manner middle portion is bruised in the right side abdomen 2 inch above 1 ½ inch X ½ inch.(iii)_ one bruise injury on left side long abdomen above buttock 1 ½ inch X ½ inch. All the injuries are simple in nature PW.4 the witness to the occurrence in his evidence stated that the occurrence took place since 8 years back at about 9 am in his village danda.

Hearing the shout he went to the spot and found 10 to 15 persons were standing and Kishore Pradhan got a bleeding injury on his head and laying down and brought him to hospital. He said that the accused persons and the informant were not pulling on wall with each other. P.W.5 another witness to the occurrence stated that on the alleged date she was standing in front of her house. Hearing the shout she went near to the house of the informant and found that after the quarrel in between the parties the informant sustained injury on his forehead and belly.

On careful scrutinization of the above evidence it is found that the informant as well as the evidence stated that he sustained injuries on his body due to the assault of the accused persons. The injury report also corroborated that the injuries sustained on the body of the informant. According to M.O all the injuries are simple in nature.

11. 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 his body which was stated by him 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.

12. So far as offence U/s.324 of IPC is concerned the prosecution has to prove that

(i) Accused voluntarily caused bodily pain, disease or infirmity to the victim.
(ii) Accused must commit an act with the knowledge that thereby he was likely to cause hurt or grievous hurt to the victim.

(iii) (a)It was caused by any shooting instrument, (b) by any stabbing instrument (c) by any cutting instrument (d) by any instrument, if used as a weapon of offence, likely to cause death (e)by means of any poison (f) by means of any corrosive substance (g) by means of any explosive substance (h) by means of any animal.

It is alleged by the informant that the accused persons assaulted his wife i.e. P.W.3 by means of a lathi. P.W.1 the informant stated that the accused His elder brother Rabindra gave a blow on his head by a lathi . P.W.2 the victim as well as the

wife of the informant has stated that accused Rabindra gave a blow on the head of informant by a lathi he said that due to assault of lathi he sustained bleeding injury on her head.. P.W.3 the MO of this case also stated that he found sharp cutting injury on the forehead of informant. Though cut injury found on the body of informant but the MO has categorically stated in his evidence in chief that the cut injury is possibly caused by sharp cutting weapon but it may be caused by a lathi. Further on his cross examination he has led down the fact that the lathi is not a sharp cutting weapon but it has a length, breadth and edge so cut injury is possible by a lathi blow.

At this point we need to shift our focus towards the ingredient of Sec.324 . it is crystal clear from the above discussion that the injury inflicted on the person of the injury is caused by a lathi and we can not categorically a lathi as dangerous weapon as explain u/s 324 so the offence 324 of IPC cannot be attracted as it prescribed punishment for cutting injury in a sharp cutting weapon but none of the prosecution witnesses including the victim himself nowhere stated the accused assaulted by any sharp cutting weapon. Hence prosecution failed to prove the offence against the accused U/s 324/34 IPC

From the above all discussion of the evidence available in case record, I found that the accused persons are found not guilty for the offences u/s 341/354/506/324 of IPC and acquitted u/s 248(I) of Cr.P.C. but the accused persons are found guilty for the offences U/s 323/34 IPC hence they are convicted U/s 248(2) of Cr.P.C.

**Judicial Magistrate First Class,
Banpur**

HEARING ON THE QUESTION OF THE SENTENCE

The convicts are present today. Heard the convict and the Learned Counsel for the Defence and the Learned A.P.P. on the question of sentence. The learned defence counsel has submitted that the accused persons are law abiding persons and accused Rabindra is an old and other accused are ladies. Hence the beneficiary provisions of Probation of Offenders Act should be extended to them. But the learned APP vehemently objected the release of the accused person on P.O. Act and prayed for heavy punishment. Keeping in view to the increasing emphasis on the reformatory and rehabilitative process of penal law this court is now to consider whether

the convicts are 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, pending of cases against each other, age, antecedents, background of the convicts, nature of offence committed this court holds that they are 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 they are acquitted from the charges u/s 341/506/354/324/34 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 person be released u/s 3 of the P.O. Act after giving them due admonition. They be discharged from their bail bonds.

**Judicial Magistrate First Class,
Banpur**

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 19th day of August, 2014.

**Judicial Magistrate First Class,
Banpur**

List of witnesses examined for Prosecution.

P.W.1 Kishore Chandra Pradhan
P.W.2 Smt. Sarojini Pradhan
P.W.3 Dr. Prasanta Kumar Hota
P.W.4 Kanhu Pradhan.
P.W.5 Nisamani Behera
P.W.6 Banoj 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.1 on Ext.1.

Ext.2 Injury report

Ext. 2/1 Signature of M.O.

Ext.2/2 Report of M.O.,

List of Exhibits marked for defence.

Nil

List of MOs marked for Prosecution.

Nil

**Judicial Magistrate First Class,
Banpur**